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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS–2013–0021]

RIN 0579–AD77

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final interpretive rule.

SUMMARY: On May 13, 2016, the Air Transport Association of America, Inc., and the International Air Transport Association filed suit against the United States Department of Agriculture, the Animal and Plant Health Inspection Service (APHIS), the Department of Homeland Security, Customs and Border Protection Agency (CBP), the Secretary of Agriculture, the Administrator of APHIS, the Commissioner of CBP, and the Secretary of Homeland Security, claiming APHIS' 2015 final rule setting fee structures for its Agricultural Quarantine and Inspection (AQI) program (Docket No. APHIS–2013–0021, effective December 28, 2015) (2015 Final Rule) violated the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act) and the Administrative Procedure Act (APA). In its March 28, 2018, Order, the U.S. District Court for the District of Columbia affirmed APHIS' cost methodology and the sufficiency of its data. *Air Transport Ass'n of Am., Inc.* v. *U.S. Dep't of Agric.,* 303 F. Supp. 3d 28 (D.D.C. 2018). However, the Court held that in the rulemaking for the 2015 Final Rule, the ground upon which APHIS relied to justify setting fees at a level that enabled APHIS to maintain a reasonable balance in the AQI user fee account was an expired provision in the FACT Act. The Court remanded to APHIS the reserve portion of the 2015 Final Rule updating user fees for the AQI program. Accordingly, on April 26, 2019, APHIS published in the **Federal Register** a interpretative rule and request for comments, titled ''User Fees for Agricultural Quarantine and Inspection Services'' (Docket No. APHIS–2013–0021) (the Interpretive Rule). The Interpretive Rule clarified the agency's statutory authority to collect a reserve fund in support of AQI inspection activities, including by citing unexpired provisions of the FACT Act as the basis for collecting and maintaining a reserve. The Interpretive Rule requested public comment related to the legal authority for the reserve component of the AQI User Fee Program. This document responds to comments received on the Interpretive Rule and finalizes that rule.

DATES: This final interpretive rule is effective February 18, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, Office of the Executive Director-Policy Management, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737 1231; (301) 851–2338; email: *AQI.User.Fees@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2016, the Air Transport Association of America, Inc., and the International Air Transport Association filed suit against the United States Department of Agriculture, the Animal and Plant Health Inspection Service (APHIS), the Department of Homeland Security, the Customs and Border Protection Agency (CBP), the Secretary of Agriculture, the Administrator of APHIS, the Commissioner of CBP, and the Secretary of Homeland Security, claiming APHIS' 2015 Final Rule setting fee structures for its Agricultural Quarantine and Inspection (AQI) program (80 FR 66748, Docket No. APHIS–2013–0021, effective December 28, 2015, referred to below as ''the Final Rule'' or ''the 2015 Final Rule'') violated the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act), 21 U.S.C. 136a, and the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.* In its March 28, 2018 Order, the U.S. District Court for the District of Columbia affirmed APHIS' cost methodology and the sufficiency of its data. *Air Transport Ass'n of Am., Inc.* v. *U.S. Dep't of Agric.,* 303 F. Supp. 3d 28 (D.D.C. 2018). The Court rejected the plaintiffs' claims that the Final Rule's imposition of the commercial aircraft fee is duplicative of the air passenger fee; that the Final Rule results in cross-subsidization; and that the Final Rule relied on unreliable data that was not disclosed to the public. However, the Court held that APHIS improperly relied on an expired provision in the FACT Act to justify setting fees at a level that enabled APHIS to maintain a reasonable balance in the AQI user fee account. The Court remanded to APHIS the reserve portion of the 2015 Final Rule updating user fees for the AQI program. The Court expressly did not vacate the rule pending further explanation by the agency. *See Air Transport Ass'n of Am., Inc.* v. *U.S. Dep't of Agric.,* 317 F. Supp. 3d 385, 392 (D.D.C. 2018).

In its memorandum opinion on summary judgment, the Court stated that the agency unreasonably relied on the ''reasonable balance'' allowance in 21 U.S.C. 136a(a)(1)(C) of the FACT Act to justify its continued fee collection to maintain a reserve, as that allowance expired after fiscal year 2002. The Court did not rule on whether APHIS had authority for continued fee collection to maintain a reserve under any other subsection of the FACT Act and, therefore, remanded to the Agency for ''reconsideration of its authority to charge a surcharge for the reserve account.'' *See Air Transport Ass'n,* 303 F. Supp. 3d at 57. The Court expressly declined to consider APHIS' explanation in its legal filings that, consistent with its past explanations and practice, APHIS justified its authority to collect such fees under other subsections of 21 U.S.C. 136a(a)(1). *Air Transport Ass'n,* 303 F. Supp. 3d at 51; *see, e.g.,* User Fees for Agricultural Quarantine & Inspection Services, 71 FR 49984 (August 24, 2006). The Court did ''not evaluate or rule on the agency's . . . argument that it had authority to fund a reserve under'' a different part of the statute, and instead remanded the rule to the agency without vacating for further consideration of the agency's authority. *Air Transport Ass'n,* 303 F. Supp. 3d at 51. The Court ordered APHIS to complete notice and comment rulemaking to address whether ''there is support for APHIS authority to set a reserve fee elsewhere in the statute

[other than 21 U.S.C. 136a(a)(1)(C)].'' *Air Transport Ass'n,* 317 F. Supp. 3d at 392.

Accordingly, on April 26, 2019, APHIS issued an interpretive rule and request for comments (Interpretive Rule) [1] (84 FR 17729–17731, Docket No. APHIS–2013–0021) to the 2015 Final Rule. In the document, APHIS clarified that subsections 136a(a)(1)(A) and (B) of the FACT Act provide adequate authority to continue setting user fees in amounts to maintain the AQI reserve, irrespective of the expiration of subsection 136a(a)(1)(C).

APHIS took comments on its Interpretive Rule for 30 days ending May 28, 2019. We received 10 comments by that date. The received comments were from an organization representing the pork industry in the United States, an organization representing the trucking industry in the United States, an organization representing commercial airlines, an organization representing county agricultural commissioners in one State, a maritime exchange, and private citizens. Three commenters supported APHIS' interpretation of the FACT Act without further comment, and two comments were not germane to the AQI User Fee program or the Interpretive Rule.

Two commenters generally agreed with APHIS' interpretation of the FACT Act, but also provided comment on how the reserve should be maintained or used in order to fully comply with the intent of the FACT Act. Three commenters disagreed with APHIS' interpretation of the FACT Act and provided reasons why they considered a reserve to be in violation of the Act.

The issues raised by the commenters are discussed below, by topic.

Comments Expressing Concern Regarding Transparency

Two commenters, one of whom supported APHIS' interpretation of the FACT Act and one of whom disagreed with it, stated that a reserve maintained to administer the User Fee program could theoretically be used for any program purpose. The commenters expressed concern that this would not allow the general public to know how large an amount was maintained in the reserve, how it was derived, and for what purposes it was being used. One of the commenters stated that, if APHIS wished to use subsections 136a(a)(1)(A) and (B) of the FACT Act as a basis for maintaining a reserve to administer the AQI User Fee program, it should make the user fee sources from which the reserve had been derived publicly available, indicating the percentage of the reserve drawn from each user fee group, and should make the total amount of the reserve publicly available as well.

The reserve is not drawn from specific user fee sources by percentage. Rather, AQI user fee rates are calculated so that a percentage allocated for the reserve (currently 3.5 percent) is built into each fee collected (see the 2015 Final Rule at 80 FR 66753).

While we do not believe the statute requires us to make the amount in the reserve publicly available, we have decided to post the amount in the reserve on APHIS' AQI user fees web page and update it on an annual basis. The page will indicate that the amount listed represents the amount in the reserve at a particular moment in time, and will further indicate that it does not include accounts due to APHIS or accounts payable from the reserve. We plan to announce the amount in the reserve, as well as the schedule for future announcements, through a notice published in the **Federal Register** in calendar year 2020. With respect to the purposes of the reserve, this notice will also provide examples of one-time expenditures from the reserve that were made in previous fiscal years; other expenditures cannot easily be itemized in the manner requested by the commenter.

Comments Regarding Cross-Subsidization

One commenter stated that, if the reserve is drawn from all user fee groups but is used on an activity that only benefits a particular user fee group, this amounts to cross-subsidization of that activity.

Subsection 136a(a)(2) of the FACT Act requires that APHIS ensure that, when setting fees, the amount of an AQI user fee is commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fee. APHIS considers this subsection to prohibit us from setting fees for one AQI program in a manner that would knowingly cross-subsidize another AQI program. In contrast, the commenter's interpretation would preclude us from using fees for activities necessary for the overall administration of the program, which would run counter to the intent of subsection 136a(a)(1)(B) of the FACT Act.

The same commenter stated that, if the reserve were used to cover revenue shortfall due to delinquent accounts, this would also constitute cross-subsidization, since the delinquent party would effectively receive services paid for by another party. The commenter also expressed concern that using the reserve in this manner could encourage delinquent parties to remain in arrears.

We do not consider this practice to constitute cross-subsidization, as it does not implicate how APHIS sets its user fees. Once again, the FACT Act only requires that, ''*in setting the fees* . . . the Secretary shall ensure that the amount of fees is commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fees.'' 21 U.S.C. 136a(a)(2) (emphasis added). Furthermore, we do not believe use of the reserve fund poses a significant risk of encouraging delinquent parties to remain in arrears. We note that there are several procedures in place within the AQI User Fees program to discourage delinquency; delinquent accounts are sent multiple billing notices, sent a letter of warning, and ultimately referred to the Department of the Treasury for collection.

Comments Regarding Congressional Intent

Two commenters disagreed with APHIS' interpretation that subsections 136a(a)(1)(A) and (B) of the FACT Act provide authority to set user fees in amounts to maintain an AQI reserve. The commenters opined that this would effectively render subsection 136a(a)(1)(C), which explicitly authorized maintaining the reserve through fiscal year (FY) 2002, superfluous and thus ineffectual. Both of the commenters suggested that the FACT Act establishes three distinct bases for collecting AQI User Fees: (1) To recover costs of providing AQI services in connection with the arrival at a port in the customs territory of the United States; (2) to recover costs of administering the program; and (3) through FY 2002, to maintain a reasonable balance in the AQI User Fee Account. The commenters stated that APHIS' interpretation of the FACT Act thus contravenes Congressional intent.

We disagree that our interpretation of subsections 136a(a)(1)(A) and (B) as allowing collection and maintenance of a reserve following the end of FY 2002 renders subsection 136a(a)(1)(C), which authorized the maintenance of a reasonable balance in the AQI User Fee Account through the end of FY 2002,

[1] To view the Interpretive Rule and the comments that we received, go to *https://www.regulations.gov/docket?D=APHIS-2013-0021.* The comments received on the correction can best be accessed by clicking on ''view all'' next to the Comments field, and then sorting by ''date posted'' on the resulting screen.

superfluous. Congress enacted the 1996 amendments in order to respond to escalating budget pressures and increasing demand for AQI services due to consistent annual increases in passenger and commercial air travel by changing AQI's funding structure to transition from being funded from an account subject to annual appropriations to a true ''user fee account.'' Revoking APHIS' ability to maintain a reasonable balance in the reserve at the same time that Congress was transitioning the AQI User Fee Account to one for which fees could only be adjusted through notice-and-comment rulemaking is inconsistent with the purpose of ensuring that the funding structure responded to the needs of the program.

The same commenters stated that a plain reading of the FACT Act limits APHIS' authority to maintain a reserve to the time period between the passage of the amended act in 1996 and the end of FY 2002.

We disagree. A plain reading of the FACT Act gives specific authority to maintain a reasonable balance until the end of FY 2002, but does not address whether a reserve could continue to be maintained after FY 2002 to recover costs associated with providing AQI services or administering AQI programs. As we discussed in the Interpretive Rule, we consider the FACT Act to grant such authority.

One commenter stated that APHIS' interpretation of the FACT Act as stated in the Interpretive Rule violated the precedent established in *Corley versus United States* (556 U.S. 303), *Marx versus General Revenue Corporation* (568 U.S. 371), *Michigan versus the Environmental Protection Agency* (135 S. Ct. 2699), *Chevron versus Natural Resources Defense Council* (467 U.S. 837), and *Laurel Baye Health Care of Lake Lanier, Inc., versus National Labor Relations Board* (564 F.3d 469 (D.C. Cir. 2009)).

We consider the APHIS' interpretation of the FACT Act to be consistent with relevant legal precedent and authorities. The agency's legal position has been expressed in full in briefs in the *Air Transport Ass'n of Am., Inc.* v. *U.S. Dep't of Agric.* litigation and APHIS continues to hold the views expressed therein. Specifically, APHIS' view is that its interpretation of the FACT Act gives effect to each of the Act's provisions.

Comment Regarding Commensurability of Fees

One commenter pointed out that section 136a(a)(2) of the FACT Act stipulates that in setting AQI User Fees, APHIS must ensure that the amount of each fee be commensurate with the costs of providing AQI services to the class of users paying the fees. The commenter opined that this section precludes fees from being set at a level that exceeds actual costs of providing services.

APHIS disagrees with the commenter's interpretation of section 136a(a)(2) of the FACT Act, which would, *inter alia,* render ineffective subsection 136a(a)(1)(B)'s authorization to collect fees at a level necessary for the administration of the program. Administrative costs often impact the AQI program as a whole; therefore, it is not possible to divide these costs based on individual user fee groups. For example, the development of policies regarding inspection procedures and sampling of agricultural commodities at ports of entry, the maintenance of manuals regarding the entry requirements for agricultural products, and the issuance of permits for agricultural commodities intended for import into the United States are not rendered to a particular user group but to the program as a whole.

Comment Regarding Calculation Process

One commenter stated that the 2015 Final Rule that set the user fee schedule for the AQI program was based on a Grant Thornton, LLC guidance document, and the Grant Thornton document appeared to calculate the fee model on the presupposition that subsection 136a(a)(1)(C) of the FACT Act was still operative. The commenter also stated that nowhere had the Grant Thornton document made it explicit that the reserve fee calculation was based on actual or imputed costs of providing AQI services or administering the AQI program. The same commenter also stated that the 2015 rule itself indicated that the reserve fee had been calculated based on the assumption that subsection 136a(a)(1)(C) of the FACT Act was still operative. The commenter believed that 136a(a)(1)(A) and (B) provide a more limited basis for collecting and maintaining a reserve.

The 2015 Final Rule took the recommendations of Grant Thornton into consideration, but the final calculation of the reserve fee was ultimately determined by APHIS. The calculation of the reserve fee was not based on the assumption that subsection 136a(a)(1)(C) of the FACT Act was still operative; the specific methodology used for calculation of the fee is set forth at length in the 2015 Final Rule (see 80 FR 66752–66753) and makes no reference to subsection 136a(a)(1)(C) of the FACT Act. Finally, we disagree with the commenter's assertion that subsections 136a(a)(1)(A) and (B) provide a more limited basis for collecting and maintaining a reserve than subsection 136a(a)(1)(C). APHIS' final calculation for the reserve is supported by subsections 136a(a)(1)(A) and (B) of the FACT Act and enables full cost recovery under the FACT Act for all the reasons stated above.

Comment Disagreeing With APHIS' Interpretation of Previous Rulemakings

In the Interpretive Rule, we stated that our interpretation of the FACT Act was consistent with long-standing practice, which had been explained to the public through multiple rulemaking proceedings, beginning in 2002. *See* 67 FR 56217, Docket No. 02–085–1; 69 FR 71660, Docket No. 04–042–1; 71 FR 49985, Docket No. 04–042–2.

A commenter stated that each rule cited by APHIS as evidence of the long-standing nature of the APHIS' interpretation of the FACT Act instead provided evidence that reserve fees have consistently been calculated based on the assumption that subsection 136a(a)(1)(C) was still operative. The commenter stated that APHIS had therefore deliberately mischaracterized prior rulemakings in the correction.

We disagree. Since 2004, we have consistently stressed the need to maintain a reserve in order to administer the AQI User Fee program and ensure continuity of services, thus effectively claiming subsections 136a(a)(1)(A) and (B) as the bases for the reserve. For example, in a 2004 rulemaking, the first rulemaking APHIS initiated after FY 2002, APHIS ''included a reserve-building component in the user fees.'' *See* 69 FR 71660, 71664. In that rulemaking, APHIS stated that ''the FACT Act, as amended'' directed that ''user fees should cover the costs of'' only three things: [(1)] Providing the AQI services for the conveyances and the passengers listed . . ., [(2)] Providing preclearance or preinspection [services], and [(3)] Administering the user fee program.'' 69 FR 71660; *see also id.* (not mentioning FACT Act's ''reasonable balance'' language). Nonetheless, in that same rulemaking, APHIS set fees that ''includ[ed] a reserve-building component.'' *Id.* at 71664. APHIS stated that it was doing so because ''[m]aintaining an adequate reserve fund is . . . essential for the AQI program,'' and explained why it ''need[s] to maintain a reasonable reserve balance in the AQI account.'' *Id.* (''The reserve fund provides us with a means to ensure the continuity of AQI services in cases

of fluctuations in activity volumes, bad debt, carrier insolvency, or other unforeseen events.'') This explanation in that 2004 rulemaking makes clear that, of the three items the cost of which user fees should cover, APHIS was justifying its inclusion ''of a reserve-building component'' directly on the third—''[a]dministering the user fee program.'' As noted previously in the Interpretive Rule and in this document, this rationale effectively relies on subsection 136a(a)(1)(B) of the FACT Act as a basis for the reserve.

The 2004 rulemaking also aligned administering the program with ensuring continuity of AQI services by indicating that one of the ways in which APHIS administers the program is by maintaining sufficient funds in reserve to ensure continuity of AQI services within the program. As noted previously in the Interpretive Rule and in this document, this rationale effectively relies on subsection 136a(a)(1)(A) of the FACT Act as another basis for the reserve.

In the 2006 final rule that responded to comments on the 2004 rulemaking, we again aligned administering the program with maintaining sufficient funds in reserve to ensure continuity of AQI services. *See* 71 FR 49985.

APHIS' 2014 proposed rule to revise the AQI user fee schedule again aligned administration of the user fee program with maintaining sufficient funds to provide AQI services. *See* 79 FR 22896.

Comment Requesting Assistance for Domestic Programs

One commenter asked that APHIS fund domestic control and eradication programs undertaken by State cooperators using AQI user fees.

The FACT Act prohibits such subsidization.

Congressional Review Act

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

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of January 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–00659 Filed 1–15–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0326; Product Identifier 2018–NM–166–AD; Amendment 39–19808; AD 2019–23–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register.** That AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. As published, the service information reference specified in a certain paragraph of the regulatory text is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective January 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 21, 2020 (84 FR 68326, December 16, 2019).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0326.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION: As published, AD 2019–23–14, Amendment 39–19808 (84 FR 68326, December 16, 2019), requires revising the existing maintenance or inspection program, as applicable, to include new or revised airworthiness limitations (AWLs) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes.

Need for the Correction

As published, the service information reference specified in the paragraph (g)(2)(ix) of the regulatory text is incorrect. Paragraph (g)(2)(ix) of the regulatory text incorrectly references the actions specified in Boeing Service Bulletin 737–28A1228 for the initial compliance time to accomplish AWL No. 28–AWL–31, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks,'' however, the correct reference for that initial compliance time is Boeing Service Bulletin 737–57A1321. Boeing Service Bulletin 737–28A1228 does not refer to AWL No. 28–AWL–31. AWL No. 28–AWL–31 is only referenced in Boeing Service Bulletin 737–57A1321.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019. This service information describes AWLs that include airworthiness limitation instructions (ALI) and critical design configuration control limitations (CDCCL) tasks related to fuel tank ignition prevention and the nitrogen generation system. 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.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the

FAA is publishing the entire rule in the **Federal Register.**

The effective date of this AD remains January 21, 2020.

Since this action only corrects a reference, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration 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 [Corrected]

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

2019–23–14: The Boeing Company: Amendment 39–19808; Docket No. FAA–2019–0326; Product Identifier 2018–NM–166–AD.

(a) Effective Date

This AD is effective January 21, 2020.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (7) of this AD.

(1) AD 2008–10–09 R1, Amendment 39–16148 (74 FR 69264, December 31, 2009) (''AD 2008–10–09 R1'').

(2) AD 2011–12–09, Amendment 39–16716 (76 FR 33988, June 10, 2011) (''AD 2011–12–09'').

(3) AD 2013–13–15, Amendment 39–17503 (78 FR 42415, July 16, 2013) (''AD 2013–13–15'').

(4) AD 2013–25–05, Amendment 39–17701 (78 FR 78701, December 27, 2013) (''AD 2013–25–05'').

(5) AD 2016–18–16, Amendment 39–18647 (81 FR 65864, September 26, 2016) (''AD 2016–18–16'').

(6) AD 2017–17–09, Amendment 39–18999 (82 FR 40477, August 25, 2017) (''AD 2017–17–09'').

(7) AD 2018–04–12, Amendment 39–19208 (83 FR 9178, March 5, 2018) (''AD 2018–04–12'').

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel; 47, Nitrogen Generation System.

(e) Unsafe Condition

This AD was prompted by a determination that new or revised airworthiness limitations (AWLs) are necessary related to fuel tank ignition prevention and the nitrogen generation system. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

(1) For The Boeing Company Model 737–100, –200, and –200C series airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section C, including Subsections C.1, C.2, and C.3 of Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019, except as provided in paragraph (h) of this AD. The initial compliance time for the ALI tasks are within the applicable compliance times specified in paragraphs (g)(1)(i) through (x) of this AD.

(i) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, or within 12 months after the effective date of this AD if no initial inspection has been performed.

(ii) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': Within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1178, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever is later.

(iii) For AWL No. 28–AWL–21, ''Center Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1228, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–21, whichever is later.

(iv) For AWL No. 28–AWL–22, ''Auxiliary Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1228, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever is later.

(v) For AWL No. 28–AWL–23, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1212, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is later.

(vi) For AWL No. 28–AWL–24, ''Center Tank Fuel Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(vii) For AWL No. 28–AWL–25, ''Auxiliary Fuel Tank Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–25, whichever is later.

(viii) For AWL No. 28–AWL–29, ''AC Fuel Boost Pump Installation'': Within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–29, or within 12 months after the effective date of this AD if no inspection has been performed in the last 72 months.

(ix) For AWL No. 47–AWL–04, ''Nitrogen Generation System (NGS)—Thermal Switch'': Within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04; whichever is latest.

(x) For AWL No. 47–AWL–05, ''Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity'': Within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 14,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–05; whichever is latest.

(2) For The Boeing Company Model 737–300, -400, and -500 series airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section C, including Subsections C.1, C.2, and C.3 of Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019; except as provided in paragraph (h) of this AD. The initial compliance time for the ALI tasks are within the applicable compliance times specified in paragraphs (g)(2)(i) through (xi) of this AD.

(i) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, or within 12 months after the effective date of this AD if no initial inspection has been performed.

(ii) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': Within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1175; within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1183; within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1186; or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03; whichever is latest.

(iii) For AWL No. 28–AWL–20, ''Center Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1216, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20, whichever is later.

(iv) For AWL No. 28–AWL–21, ''Auxiliary Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1216, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–21, whichever is later.

(v) For AWL No. 28–AWL–22, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1212, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever is later.

(vi) For AWL No. 28–AWL–23, ''Center Tank Fuel Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is later.

(vii) For AWL No. 28–AWL–24, ''Auxiliary Fuel Tank Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(viii) For AWL No. 28–AWL–27, ''AC Fuel Boost Pump Installation'': Within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–27, or within 12 months after the effective date of this AD if no inspection has been performed in the last 72 months.

(ix) For AWL No. 28–AWL–31, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': Within 144 months after accomplishment of the actions specified in Boeing Service Bulletin 737–57A1321.

(x) For AWL No. 47–AWL–04, ''Nitrogen Generation System (NGS)—Thermal Switch'': Within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04; whichever is latest.

(xi) For AWL No. 47–AWL–05, ''Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity'': Within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 14,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–05; whichever is latest.

(h) Additional Acceptable Wire Types and Sleeving

As an option to accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) and (2) of this AD are acceptable.

(1) Where AWL No. 28–AWL–05 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–05 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Terminating Actions for Certain AD Requirements

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (j)(1) through (7) of this AD for that airplane:

(1) All requirements of AD 2008–10–09 R1.

(2) The revision required by paragraph (l) of AD 2011–12–09.

(3) The revision required by paragraph (h) of AD 2013–13–15.

(4) The revision required by paragraph (j) of AD 2013–25–05.

(5) The revisions required by paragraphs (l) and (n) of AD 2016–18–16.

(6) The revision required by paragraph (h) of AD 2017–17–09.

(7) The revision required by paragraph (h) of AD 2018–04–12.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@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) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs that were previously approved for the ADs specified in paragraph (j) of this AD are not approved as AMOCs for this AD.

(l) Related Information

For more information about this AD, contact Serj Harutunian, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 21, 2020 (84 FR 68326, December 16, 2019).

(i) Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019.

(ii) [Reserved]

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

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

(6) 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 9, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00580 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0609; Product Identifier 2019–NM–054–AD; Amendment 39–21018; AD 2019–25–19]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 airplanes. This AD was prompted by a report of dislodged passenger door girt bars. This AD requires modification of the girt bar retention mechanism of the affected doors, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 20, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 20, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0609.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0609; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0076, dated March 29, 2019 (''EASA AD 2019–0076'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on August 26, 2019 (84 FR 44563). The NPRM was prompted by a report of dislodged passenger door girt bars. The NPRM proposed to require modification of the girt bar retention mechanism of the affected door.

The FAA is issuing this AD to address dislodged girt bars, which could result in functional loss of the affected door slide and possibly prevent safe evacuation during an emergency. See the MCAI for additional background information.

Comments

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

Supportive Comments

One anonymous commenter stated support for the NPRM. Delta Airlines also agreed with the intent of the NPRM and submitted a request as described below.

Request for Correction of Certain Serial Numbers

Delta Airlines requested that the FAA include a correction to certain serial numbers listed in the appendixes of Airbus service information referenced by EASA AD 2019–0076. Delta Airlines stated that certain door serial numbers were duplicated for certain airplanes across the different appendixes and after sending a request for clarification, Airbus confirmed to Delta Airlines that those repeated numbers were typographical errors.

The FAA agrees to revise this AD to include the correct serial numbers. For airplanes having manufacturer serial numbers 0062 and 0119, the appendixes of Airbus service information referenced by EASA AD 2019–0076 identify the correct part numbers for the doors, but not the correct associated serial numbers. Those two airplanes, with manufacturer serial number (MSN) 0062 and 0119, are not on the U.S. registry. The FAA has added paragraphs (h)(3) and (h)(4) to this AD to specify the correct serial numbers.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0076 describes procedures for modification of the girt bar retention mechanism of the affected doors. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
52 work-hours × $85 per hour = $4,420	$90,000	$94,420	$1,133,040

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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–25–19 Airbus SAS: Amendment 39–21018; Docket No. FAA–2019–0609; Product Identifier 2019–NM–054–AD.

(a) Effective Date

This AD is effective February 20, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of dislodged passenger door girt bars. The FAA is issuing this AD to address dislodged girt bars, which could result in functional loss of the affected door slide and possibly prevent safe evacuation during an emergency.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0076, dated March 29, 2019 (''EASA AD 2019–0076'').

(h) Exceptions to EASA AD 2019–0076

(1) Where EASA AD 2019–0076 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0076 does not apply to this AD.

(3) For an airplane having manufacturer serial number (MSN) 0062: Where the service information referenced in EASA AD 2019–0076 specifies door serial numbers (S/Ns) for that MSN, this AD requires using the applicable door S/Ns specified in paragraphs (h)(3)(i) through (viii) of this AD instead.

(i) For left-hand (LH) door 1: S/N UH10082 for part number (P/N) WF101BGBBAAH.

(ii) For RH door 1: S/N UH10080 for P/N WF100BHBBAAH.

(iii) For LH door 2: S/N UH10080 for P/N WG101BKAYAAB.

(iv) For RH door 2: S/N UH10075 for P/N WG100BJAYAAB.

(v) For LH door 3: S/N UH10075 for P/N WD101BFAUAAB.

(vi) For RH door 3: S/N UH10084 for P/N WD100BFAUAAB.

(vii) For LH door 4: S/N UH10070 for P/N WH101BRAXAAB.

(viii) For RH door 4: S/N UH10070 for P/N WH100BQAXAAB.

(4) For an airplane having MSN 0119: Where the service information referenced in EASA AD 2019–0076 specifies door serial numbers for that MSN, this AD requires using the applicable door serial numbers specified in paragraphs (h)(4)(i) through (viii) of this AD instead.

(i) LH door 1: S/N UH10128 for P/N WF101BJBBAAH.

(ii) RH door 1: S/N UH10122 for P/N WF100BKBBAAH.

(iii) LH door 2: S/N UH10122 for P/N WG101BNAYAAB.

(iv) RH door 2: S/N UH10120 for P/N WG100BKAYAAB.

(v) LH door 3: S/N UH10126 for P/N WD101BMAUAAB.

(vi) RH door 3: S/N UH10126 for P/N WD100BMAUAAB.

(vii) LH door 4: S/N UH10126 for P/N WH101BWAXAAB.

(viii) RH door 4: S/N UH10124 for P/N WH100BVAXAAB.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in

paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0076 that contains RC procedures and tests: Except as required by paragraphs (h)(3) and (4), and (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0076, dated March 29, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0076, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0609.

(5) You may view this material 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 31, 2019.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00609 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31291; Amdt. No. 550]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum enroute authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, January 30, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on December 27, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 30, 2020.

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
§ 95.3000 LOW ALTITUDE RNAV ROUTES			
§ 95.3239 RNAV Route T239 is Added to Read			
PECAN, GA VOR/DME	SHANY, GA FIX	2000	17500
SHANY, GA FIX	EUFAULA, AL VORTAC	2300	17500
EUFAULA, AL VORTAC	MILER, AL FIX	2000	17500
MILER, AL FIX	TUSKEGEE, AL VOR/DME	2300	17500
TUSKEGEE, AL VOR/DME	KENTT, AL FIX	2600	17500
*2100—MOCA.			
KENTT, AL FIX	VLKNN, AL WP	3200	17500
VLKNN, AL WP	FOGUM, AL FIX	2600	17500
FOGUM, AL FIX	SWIKI, AL WP	2600	17500
*2100—MOCA.			
SWIKI, AL WP	GANTT, MS WP	2500	17500
GANTT, MS WP	ICAVY, MS FIX	2300	17500
ICAVY, MS FIX	GOINS, MS WP	2400	17500
§ 95.3258 RNAV Route T258 is Added to Read			
MINIM, AL FIX	CRMSN, AL WP	2300	17500
CRMSN, AL WP	BROOKWOOD, AL VORTAC	2500	17500
BROOKWOOD, AL VORTAC	HEENA, AL FIX	2600	17500
HEENA, AL FIX	KYLEE, AL FIX	2900	17500
KYLEE, AL FIX	CAMPP, AL FIX	3200	17500
CAMPP, AL FIX	LAGRANGE, GA VORTAC	2900	17500
LAGRANGE, GA VORTAC	LANGA, GA FIX	2600	17500
LANGA, GA FIX	CANER, GA FIX	3500	17500
§ 95.3268 RNAV Route T268 is Added to Read			
TATOOSH, WA VORTAC	HEMER, WA WP	3800	17500
HEMER, WA WP	YUCSU, WA FIX	4500	17500
YUCSU, WA FIX	NOOEL, WA WP	4500	17500
NOOEL, WA WP	STVOH, WA WP	4400	17500
STVOH, WA WP	WATTR, WA FIX	2600	17500
WATTR, WA FIX	LEION, WA WP	3000	17500
*2400—MOCA.			
LEION, WA WP	AYURU, WA WP	2000	17500
*3500—MCA AYURU, WA WP, E BND.			
AYURU, WA WP	WOODI, WA FIX	5600	17500
WOODI, WA FIX	BANDR, WA FIX	7600	17500
BANDR, WA FIX	TMBOB, WA WP	7800	17500
*7200—MCA TMBOB, WA WP, W BND.			
TMBOB, WA WP	MERFF, WA WP	6600	17500
*6600—MOCA.			
MERFF, WA WP	DOFDO, WA FIX	6800	17500
*5400—MCA DOFDO, WA FIX, SW BND.			
DOFDO, WA FIX	MOSES LAKE, WA VOR/DME	3400	17500
MOSES LAKE, WA VOR/DME	SUBDY, WA FIX	3700	17500
SUBDY, WA FIX	YICUB, WA FIX	4400	17500
YICUB, WA FIX	SPOKANE, WA VORTAC	4800	17500
*5300—MCA SPOKANE, WA VORTAC, E BND.			
SPOKANE, WA VORTAC	HILIE, ID FIX	7400	17500
HILIE, ID FIX	MULLAN PASS, ID VOR/DME	9000	17500
MULLAN PASS, ID VOR/DME	ALTON, MT FIX	9400	17500
ALTON, MT FIX	MISSOULA, MT VOR/DME	8800	17500
MISSOULA, MT VOR/DME	BAMBE, MT FIX	9500	17500
BAMBE, MT FIX	PIXXI, MT FIX	10000	17500
PIXXI, MT FIX	RICHD, MT FIX	10600	17500
*10300—MCA RICHD, MT FIX, W BND.			
RICHD, MT FIX	HELENA, MT VORTAC	9700	17500
HELENA, MT VORTAC	SWEDD, MT FIX	10000	17500
SWEDD, MT FIX	CONNS, MT FIX	10800	17500
CONNS, MT FIX	NUKUW, MT FIX	10000	17500
NUKUW, MT FIX	SUBKY, MT FIX	11700	17500
*10000—MCA SUBKY, MT FIX, W BND.			
SUBKY, MT FIX	REEPO, MT FIX	8300	17500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
*7200—MCA REEPO, MT FIX, W BND.			
REEPO, MT FIX	COLUS, MT FIX	6900	17500
COLUS, MT FIX	BILLINGS, MT VORTAC	6500	17500
BILLINGS, MT VORTAC	MILES CITY, MT VOR/DME	5800	17500
MILES CITY, MT VOR/DME	QATSA, ND FIX	5200	17500
QATSA, ND FIX	DICKINSON, ND VORTAC	4700	17500
*4200—MOCA.			
DICKINSON, ND VORTAC	BISMARCK, ND VOR/DME	4500	17500
§ 95.3274 RNAV Route T274 is Amended by Adding			
CRAAF, OR FIX	JAIME, OR FIX	6100	17500
JAIME, OR FIX	DBLEY, OR WP	8000	17500
*8200—MCA DBLEY, OR WP, E BND.			
DBLEY, OR WP	MMDSN, OR WP	10000	17500
MMDSN, OR WP	MMASN, OR WP	9000	17500
MMASN, OR WP	POCIT, OR FIX	9000	17500
POCIT, OR FIX	GIFRD, OR WP	9000	17500
GIFRD, OR WP	FASAB, OR WP	10000	17500
FASAB, OR WP	NUSME, CA WP	10000	17500
NUSME, CA WP	RUFUS, CA WP	10100	17500
RUFUS, CA WP	DUCCS, NV WP	10100	17500
DUCCS, NV WP	SEDTO, NV FIX	10200	17500
*9200—MOCA.			
SEDTO, NV FIX	MUSTANG, NV VORTAC	11000	17500
MUSTANG, NV VORTAC	YERIN, NV FIX	10000	17500
*10400—MCA YERIN, NV FIX, SE BND.			
YERIN, NV FIX	SCOLA, NV WP	11400	17500
SCOLA, NV WP	BABIT, NV FIX	10800	17500
*10100—MOCA.			
BABIT, NV FIX	COALDALE, NV VORTAC	10500	17500
COALDALE, NV VORTAC	LIDAT, NV FIX	10000	17500
Is Amended to Read in Part			
NEWPORT, OR VORTAC	WESHH, OR WP	4200	17500
WESHH, OR WP	CRAAF, OR FIX	4500	17500
§ 95.3276 RNAV Route T276 is Amended by Adding			
WAVLU, WA FIX	WINLO, WA FIX	5400	17500
WINLO, WA FIX	COUGA, WA FIX	5100	17500
CARBY, WA FIX	VECCU, WA FIX	7000	17500
VECCU, WA FIX	HUNGR, WA WP	5600	17500
HUNGR, WA WP	LAYTN, WA WP	5000	17500
LAYTN, WA WP	WALLA WALLA, WA VOR/DME	4500	17500
WALLA WALLA, WA VOR/DME	RENGO, WA FIX	6400	17500
RENGO, WA FIX	POTOR, WA FIX	7200	17500
POTOR, WA FIX	CUPEV, ID FIX	6100	17500
*5600—MOCA.			
CUPEV, ID FIX	HENVO, ID WP	6300	17500
HENVO, ID WP	OFINO, ID FIX	6300	17500
OFINO, ID FIX	JIROS, MT FIX	9800	17500
JIROS, MT FIX	MISSOULA, MT VOR/DME	9500	17500
MISSOULA, MT VOR/DME	ARSHO, MT WP	10700	17500
*10200—MOCA.			
ARSHO, MT WP	BRCKN, MT WP	11600	17500
*10000—MCA BRCKN, MT WP, SW BND.			
BRCKN, MT WP	FRYMN, MT FIX	8300	17500
FRYMN, MT FIX	YOGOS, MT FIX	8000	17500
*6600—MOCA.			
YOGOS, MT FIX	EVBUJ, MT WP	8500	17500
EVBUJ, MT WP	ITEVE, MT WP	8000	17500
ITEVE, MT WP	WUDEY, MT WP	8000	17500
*5200—MCA WUDEY, MT WP, W BND.			
WUDEY, MT WP	GLASGOW, MT VOR/DME	5000	17500
Is Amended to Read in Part			
COUGA, WA FIX	CARBY, WA FIX	7000	17500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
*6500—MOCA.			
§ 95.3290 RNAV Route T290 is Amended by Adding			
HABJE, MS FIX	MERIDIAN, MS VORTAC	2300	17500
MERIDIAN, MS VORTAC	KWANE, MS WP	2400	17500
KWANE, MS WP	RABEC, AL WP	2300	17500
RABEC, AL WP	MONTGOMERY, AL VORTAC	2000	17500
MONTGOMERY, AL VORTAC	SCAIL, AL WP	2600	17500
*3400—MCA SCAIL, AL WP, E BND.			
§ 95.3292 RNAV Route T292 is Amended to Read in Part			
SEMMES, AL VORTAC	ANTUH, AL WP	2000	17500
ANTUH, AL WP	JANES, AL FIX	2000	17500
JANES, AL FIX	KWANE, MS WP	2300	17500
KWANE, MS WP	EUTAW, AL FIX	2000	17500
EUTAW, AL FIX	MOVIL, AL FIX	2300	17500
MOVIL, AL FIX	BROOKWOOD, AL VORTAC	2500	17500
BROOKWOOD, AL VORTAC	VLKNN, AL WP	2500	17500
VLKNN, AL WP	HOKES, AL FIX	3200	17500
HOKES, AL FIX	MAYES, AL FIX	2900	17500
MAYES, AL FIX	RKMRT, GA WP	3600	17500
§ 95.3294 RNAV Route T294 is Amended by Adding			
HABJE, MS FIX	MERIDIAN, MS VORTAC	2300	17500
MERIDIAN, MS VORTAC	BOYDD, AL FIX	2300	17500
BOYDD, AL FIX	CRMSN, AL WP	2000	17500
CRMSN, AL WP	VLKNN, AL WP	2500	17500
VLKNN, AL WP	JOTAV, AL FIX	3300	17500
JOTAV, AL FIX	DEGAA, AL WP	2700	17500
DEGAA, AL WP	HEFIN, AL FIX	3400	17500
§ 95.3302 RNAV Route T302 is Amended by Adding			
CUPRI, OR FIX	ZUDMI, OR WP	9000	17500
*8200—MOCA.			
ZUDMI, OR WP	DRYLD, OR WP	9100	17500
DRYLD, OR WP	WILDHORSE, OR VOR/DME	9000	17500
WILDHORSE, OR VOR/DME	JOSTN, OR WP	8100	17500
JOSTN, OR WP	UKAYI, OR WP	8000	17500
*5500—MCA UKAYI, OR WP, SW BND.			
UKAYI, OR WP	PARMO, ID FIX	5000	17500
PARMO, ID FIX	ADEXE, ID WP	5000	17500
*5400—MCA ADEXE, ID WP, E BND.			
ADEXE, ID WP	ALKAL, ID FIX	7000	17500
*6200—MCA ALKAL, ID FIX, W BND.			
ALKAL, ID FIX	FEVDO, ID WP	6000	17500
FEVDO, ID WP	TOXEE, ID FIX	6100	17500
TOXEE, ID FIX	JADUP, ID WP	7000	17500
JADUP, ID WP	MRILE, ID WP	9100	17500
*10200—MCA MRILE, ID WP, E BND.			
MRILE, ID WP	RAMMM, ID WP	11000	17500
RAMMM, ID WP	MIKAE, WY WP	11700	17500
MIKAE, WY WP	BXTER, WY WP	11700	17500
BXTER, WY WP	EEBEE, WY WP	10000	17500
*8700—MOCA.			
EEBEE, WY WP	REGVE, WY WP	10200	17500
REGVE, WY WP	ROCK SPRINGS, WY VOR/DME	10200	17500
ROCK SPRINGS, WY VOR/DME	FIKLA, WY WP	10000	17500
FIKLA, WY WP	MEDICINE BOW, WY VOR/DME	10000	17500
MEDICINE BOW, WY VOR/DME	ZIKRU, NE FIX	10000	17500
*7400—MCA ZIKRU, NE FIX, W BND.			
ZIKRU, NE FIX	SCOTTSBLUFF, NE VORTAC	6700	17500
SCOTTSBLUFF, NE VORTAC	WAKPA, NE WP	6000	17500
WAKPA, NE WP	ALLIANCE, NE VOR/DME	6000	17500
ALLIANCE, NE VOR/DME	EFFEX, NE FIX	6000	17500
EFFEX, NE FIX	MARSS, NE FIX	5400	17500
MARSS, NE FIX	PUKFA, NE WP	4800	17500
PUKFA, NE WP	GIYED, NE FIX	4600	17500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
GIYED, NE FIX	LLUKY, NE WP	3900	17500
Is Amended to Read in Part			
CUKIS, OR WP	JJACE, OR WP	7300	17500
JERMM, OR WP	CUPRI, OR FIX	6600	17500
*5900—MOCA.			
§ 95.3304 RNAV Route T304 is Amended to Delete			
GLARA, OR FIX	PUTZZ, OR WP	7500	17500
PUTZZ, OR WP	JJETT, OR WP	8000	17500
JJETT, OR WP	WISSL, OR WP	8000	17500
WISSL, OR WP	HERBS, OR FIX	7000	17500
*6000—MOCA.			
§ 95.3317 RNAV Route T317 is Added to Read			
NEWMAN, TX VORTAC	MOLLY, NM FIX	8900	17500
*7700—MCA MOLLY, NM FIX, E BND.			
MOLLY, NM FIX	FRIAN, NM FIX	6800	17500
*6300—MOCA.			
FRIAN, NM FIX	DUCAS, NM FIX	7900	17500
*9200—MCA DUCAS, NM FIX, NW BND.			
DUCAS, NM FIX	TRUTH OR CONSEQUENCES, NM VORTAC	9700	17500
TRUTH OR CONSEQUENCES, NM VORTAC	SOCORRO, NM VORTAC	10100	17500
SOCORRO, NM VORTAC	YECUG, NM WP	7900	17500
YECUG, NM WP	AWASH, NM FIX	8600	17500
*8100—MOCA.			
AWASH, NM FIX	CABZO, NM FIX	10000	17500
CABZO, NM FIX	TANER, NM FIX	10300	17500
TANER, NM FIX	MISSY, NM FIX	9600	17500
MISSY, NM FIX	RATTLESNAKE, NM VORTAC	8900	17500
RATTLESNAKE, NM VORTAC	RIZAL, CO FIX	8900	17500
*10000—MCA RIZAL, CO FIX, N BND.			
RIZAL, CO FIX	MANCA, CO FIX	11200	17500
MANCA, CO FIX	GRAND JUNCTION, CO VOR/DME	12200	17500
*10800—MCA GRAND JUNCTION, CO VOR/DME, SE BND.			
GRAND JUNCTION, CO VOR/DME	TESSY, CO FIX	10100	17500
*10700—MCA TESSY, CO FIX, N BND.			
TESSY, CO FIX	RACER, CO FIX	11300	17500
RACER, CO FIX	RENAE, CO FIX	10800	17500
RENAE, CO FIX	ROCK SPRINGS, WY VOR/DME	11900	17500
*10200—MCA ROCK SPRINGS, WY VOR/DME, S BND.			
ROCK SPRINGS, WY VOR/DME	SWEAT, WY FIX	10000	17500
SWEAT, WY FIX	HONOX, WY FIX	10000	17500
HONOX, WY FIX	RIVERTON, WY VOR/DME	8300	17500
*7800—MOCA.			
RIVERTON, WY VOR/DME	FETIK, WY FIX	7500	17500
*8800—MCA FETIK, WY FIX, N BND.			
*7500—MOCA.			
FETIK, WY FIX	CRANY, WY FIX	9800	17500
CRANY, WY FIX	PECKK, WY FIX	7900	17500
PECKK, WY FIX	PRYER, MT FIX	11100	17500
*9900—MCA PRYER, MT FIX, S BND.			
PRYER, MT FIX	BILLINGS, MT VORTAC	7500	17500
BILLINGS, MT VORTAC	TASSE, MT FIX	6200	17500
TASSE, MT FIX	JUGAP, MT FIX	6800	17500
*8400—MCA JUGAP, MT FIX, NW BND.			
JUGAP, MT FIX	ZERZO, MT FIX	9700	17500
ZERZO, MT FIX	AUBBY, MT WP	10500	17500
*8300—MCA AUBBY, MT WP, E BND.			
AUBBY, MT WP	GREAT FALLS, MT VORTAC	6500	17500
GREAT FALLS, MT VORTAC	TUCKB, MT FIX	7000	17500
TUCKB, MT FIX	ROSOE, MT FIX	7600	17500
*7600—MOCA.			
ROSOE, MT FIX	PREEL, MT WP	8600	17500
*10200—MCA PREEL, MT WP, SW BND.			
PREEL, MT WP	KUNZY, MT WP	11200	17500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
KUNZY, MT WP	OCEDA, MT FIX	9600	17500
*9100—MOCA.			
OCEDA, MT FIX	MISSOULA, MT VOR/DME	10100	17500
MISSOULA, MT VOR/DME	JIROS, MT FIX	9500	17500
JIROS, MT FIX	OFINO, ID FIX	9800	17500
OFINO, ID FIX	NEZ PERCE, ID VOR/DME	6100	17500
NEZ PERCE, ID VOR/DME	POTOR, WA FIX	6100	17500
*5600—MOCA.			
POTOR, WA FIX	RENGO, WA FIX	7200	17500
RENGO, WA FIX	BUTOC, WA FIX	6400	17500
BUTOC, WA FIX	BACUN, WA FIX	4500	17500
BACUN, WA FIX	PASCO, WA VOR/DME	3300	17500
PASCO, WA VOR/DME	NIALS, WA FIX	2900	17500
*3300—MCA NIALS, WA FIX, NW BND.			
NIALS, WA FIX	FEBUS, WA FIX	4900	17500
FEBUS, WA FIX	MERFF, WA WP	6200	17500
MERFF, WA WP	THICK, WA FIX	7900	17500
*7200—MOCA.			
THICK, WA FIX	RADDY, WA FIX	8700	17500
RADDY, WA FIX	MOUNT, WA FIX	8400	17500
MOUNT, WA FIX	COFAY, WA WP	7700	17500
*4600—MCA COFAY, WA WP, E BND.			
COFAY, WA WP	FESAS, WA WP	2000	17500
FESAS, WA WP	OZEYO, WA FIX	3000	17500
*3800—MCA OZEYO, WA FIX, SW BND.			
*2500—MOCA.			
OZEYO, WA FIX	CETUV, WA FIX	4700	17500
CETUV, WA FIX	HEVOL, WA FIX	5200	17500
HEVOL, WA FIX	ASTORIA, OR VOR/DME	4800	17500
*4300—MOCA.			
§ 95.3328	**RNAV Route T328 is Added to Read**		
ORCUS, WA FIX	MADEE, WA WP	2000	17500
*4800—MCA MADEE, WA WP, E BND.			
MADEE, WA WP	BOCAT, WA FIX	6000	17500
BOCAT, WA FIX	BJAAY, WA WP	6300	17500
*8100—MCA BJAAY, WA WP, E BND.			
BJAAY, WA WP	CREEB, WA FIX	9000	17500
*10200—MCA CREEB, WA FIX, E BND.			
CREEB, WA FIX	ROZSE, WA WP	11000	17500
*11300—MCA ROZSE, WA WP, E BND.			
ROZSE, WA WP	KRUZR, WA FIX	11700	17500
KRUZR, WA FIX	STRDP, WA WP	10800	17500
*8800—MCA STRDP, WA WP, W BND.			
STRDP, WA WP	KLSEY, WA WP	7600	17500
*6700—MCA KLSEY, WA WP, W BND.			
KLSEY, WA WP	SINGG, WA WP	5000	17500
*6200—MCA SINGG, WA WP, E BND.			
SINGG, WA WP	ROZTY, WA WP	7000	17500
ROZTY, WA WP	PRRKS, WA WP	7400	17500
PRRKS, WA WP	DAINA, WA WP	7500	17500
DAINA, WA WP	INOBE, ID FIX	7300	17500
INOBE, ID FIX	RNDDY, ID WP	7700	17500
*8600—MCA RNDDY, ID WP, E BND.			
RNDDY, ID WP	KAPPN, MT WP	11000	17500
*10200—MCA KAPPN, MT WP, W BND.			
KAPPN, MT WP	KARSH, MT WP	8800	17500
§ 95.3332	**RNAV Route T332 is Added to Read**		
ZONUV, WA WP	CRNEL, WA WP	6100	17500
*4600—MOCA.			
CRNEL, WA WP	AALIX, WA WP	7200	17500
AALIX, WA WP	BAALE, WA WP	8500	17500
*9400—MCA BAALE, WA WP, E BND.			
BAALE, WA WP	SNNDY, WA WP	10000	17500
*9500—MOCA.			
SNNDY, WA WP	COADY, WA WP	10400	17500
COADY, WA WP	DYNGO, WA WP	10600	17500
DYNGO, WA WP	METOO, WA WP	10400	17500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
*9500—MCA METOO, WA WP, W BND.			
METOO, WA WP	HVARD, WA WP	7900	17500
HVARD, WA WP	REPII, WA WP	7000	17500
REPII, WA WP	ROZTY, WA WP	7000	17500
§ 95.3355 RNAV Route T355 is Added to Read			
FOLDS, CA FIX	DIMGE, CA WP	11200	17500
*9600—MCA DIMGE, CA WP, S BND.			
DIMGE, CA WP	GRENA, CA FIX	7600	17500
*6300—MOCA.			
GRENA, CA FIX	ROMAE, CA FIX	9000	17500
ROMAE, CA FIX	TALEM, OR FIX	9700	17500
*9200—MCA TALEM, OR FIX, SE BND.			
TALEM, OR FIX	SAMIE, OR FIX	7800	17500
SAMIE, OR FIX	BROKN, OR FIX	6900	17500
BROKN, OR FIX	KINZY, OR WP	8900	17500
KINZY, OR WP	SSTRS, OR WP	9800	17500
SSTRS, OR WP	OCTAD, OR FIX	8300	17500
*7100—MCA OCTAD, OR FIX, S BND.			
*7700—MOCA.			
OCTAD, OR FIX	HERBS, OR FIX	6900	17500
HERBS, OR FIX	WISSL, OR WP	6400	17500
WISSL, OR WP	JJETT, OR WP	7700	17500
JJETT, OR WP	PUTZZ, OR WP	7700	17500
PUTZZ, OR WP	GLARA, OR FIX	7300	17500
*5100—MCA GLARA, OR FIX, E BND.			
GLARA, OR FIX	CANBY, OR FIX	3500	17500
*2800—MOCA.			
CANBY, OR FIX	KKARP, OR WP	5300	17500
KKARP, OR WP	CETUV, WA FIX	5300	17500
CETUV, WA FIX	ZOLGI, WA FIX	4900	17500
ZOLGI, WA FIX	WUMOX, WA FIX	3400	17500
*3100—MCA WUMOX, WA FIX, S BND.			
WUMOX, WA FIX	PENN COVE, WA VOR/DME	3000	17500
PENN COVE, WA VOR/DME	ZONUV, WA WP	3000	17500
ZONUV, WA WP	UCAKI, WA WP	3000	17500
UCAKI, WA WP	SECOG, WA FIX	2300	17500
§ 95.4000 High Altitude RNAV Routes § 95.4083 RNAV Route Q83 is Amended to Read in Part			
WURFL, SC WP	JUSEE, SC WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
JUSEE, SC WP	EFFAY, SC WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
§ 95.4087 RNAV Route Q87 is Amended to Read in Part			
DUCEN, FL WP	OVENP, FL WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
OVENP, FL WP	FEMON, FL WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
FEMON, FL WP	VIYAP, GA WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
VIYAP, GA WP	SUSYQ, GA WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
SUSYQ, GA WP	TAALN, GA WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
§ 95.4089 RNAV Route Q89 is Amended to Read in Part			
PRMUS, FL WP	OVENP, FL WP	#*18000	45000
*18000—GNSS MEA.			

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 550 effective date January 30, 2020]

FROM	TO	MEA	MAA
*DME/DME/IRU MEA.			
OVENP, FL WP	SHRKS, FL WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
§ 95.4103 RNAV Route Q103 is Amended to Read in Part			
RIELE, SC WP	GRONK, SC WP	#*30000	45000
*30000—GNSS MEA.			
*DME/DME/IRU MEA.			
GRONK, SC WP	EMCET, SC WP	#*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			
§ 95.4112 RNAV Route Q112 is Amended to Delete			
INPIN FL FIX	DEFUN, FL FIX	*18000	45000
*18000—GNSS MEA.			
*DME/DME/IRU MEA.			

FROM	TO	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6159 VOR Federal Airway V159 is Amended to Read in Part		
PECAN, GA VOR/DME	*SHANY, GA FIX	**2000
*4000—MRA.		
**1800—MOCA.		
SHANY, GA FIX	*SAWES, GA FIX	2100
*2200—MRA.		
SAWES, GA FIX	EUFAULA, AL VORTAC	2100
§ 95.6195 VOR Federal Airway V195 is Amended to Read in Part		
BURRS, CA FIX	*TOMAD, CA FIX	**6000
*7300—MCA TOMAD, CA FIX, W BND.		
**4600—MOCA.		
§ 95.6451 VOR Federal Airway V451 is Amended to Read in Part		
LA GUARDIA, NY VOR/DME	*NESSI, CT FIX	**4000
*4000—MCA NESSI, CT FIX, W BND.		
**1900—MOCA.		
**2000—GNSS MEA.		
NESSI, CT FIX	KEYED, NY FIX	#2500

#Segment Unusable Except for Aircraft Equipped With Suitable RNAV System With GPS.

FROM	TO	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7004 Jet Route J4 is Amended to Delete			
COLLIERS, SC VORTAC	COLUMBIA, SC VORTAC	18000	45000
COLUMBIA, SC VORTAC	FLORENCE, SC VORTAC	18000	45000
FLORENCE, SC VORTAC	WILMINGTON, NC VORTAC	18000	45000
§ 95.7020 Jet Route J20 is Amended to Delete			
SEMINOLE, FL VORTAC	ORLANDO, FL VORTAC	18000	45000
§ 95.7037 Jet Route J37 is Amended to Delete			
MONTGOMERY, AL VORTAC	SPARTANBURG, SC VORTAC	18000	45000
SPARTANBURG, SC VORTAC	LYNCHBURG, VA VOR/DME	#	45000
#UNUSABLE.			
§ 95.7041 Jet Route J41 is Amended to Delete			
KEY WEST, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000

FROM	TO	MEA	MAA
LEE COUNTY, FL VORTAC	ST PETERSBURG, FL VORTAC	18000	45000
ST PETERSBURG, FL VORTAC	SEMINOLE, FL VORTAC	#*25000	45000
*18000—GNSS MEA.			
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
§ 95.7043	**Jet Route J43 is Amended to Delete**		
DOLPHIN, FL VORTAC	LA BELLE, FL VORTAC	18000	45000
LA BELLE, FL VORTAC	ST PETERSBURG, FL VORTAC	18000	45000
ST PETERSBURG, FL VORTAC	SEMINOLE, FL VORTAC	#*25000	45000
*18000—GNSS MEA.			
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
SEMINOLE, FL VORTAC	ATLANTA, GA VORTAC	18000	45000
Is Amended by Adding			
NEDDY, GA FIX	ATLANTA, GA VORTAC	18000	45000
§ 95.7045	**Jet Route J45 is Amended to Delete**		
VIRGINIA KEY, FL VOR/DME	TREASURE, FL VORTAC	18000	45000
TREASURE, FL VORTAC	ORMOND BEACH, FL VORTAC	18000	45000
ORMOND BEACH, FL VORTAC	CRAIG, FL VORTAC	18000	45000
CRAIG, FL VORTAC	ALMA, GA VORTAC	18000	45000
§ 95.7046	**Jet Route J46 is Amended to Delete**		
VOLUNTEER, TN VORTAC	ATHENS, GA VOR/DME	18000	45000
ATHENS, GA VOR/DME	ALMA, GA VORTAC	18000	45000
§ 95.7047	**Jet Route J47 is Amended to Delete**		
CHARLESTON, SC VORTAC	COLUMBIA, SC VORTAC	18000	45000
COLUMBIA, SC VORTAC	SPARTANBURG, SC VORTAC	18000	45000
§ 95.7051	**Jet Route J51 is Amended to Delete**		
CRAIG, FL VORTAC	SAVANNAH, GA VORTAC	18000	45000
SAVANNAH, GA VORTAC	COLUMBIA, SC VORTAC	18000	45000
COLUMBIA, SC VORTAC	TUBAS, NC FIX	18000	45000
§ 95.7052	**Jet Route J52 is Amended to Delete**		
COLUMBIA, SC VORTAC	TUBAS, NC FIX	18000	45000
§ 95.7053	**Jet Route J53 is Amended to Delete**		
DOLPHIN, FL VORTAC	PAHOKEE, FL VOR/DME	18000	45000
PAHOKEE, FL VOR/DME	ORLANDO, FL VORTAC	18000	45000
ORLANDO, FL VORTAC	CRAIG, FL VORTAC	18000	45000
CRAIG, FL VORTAC	COLLIERS, SC VORTAC	18000	45000
Is Amended to Read in Part			
DUNKN, GA FIX	COLLIERS, SC VORTAC	18000	45000
§ 95.7055	**Jet Route J55 is Amended to Delete**		
DOLPHIN, FL VORTAC	LLAKE, FL FIX	18000	45000
LLAKE, FL FIX	INPIN, FL WP	23000	45000
INPIN, FL WP	LOULO, FL FIX	18000	45000
LOULO, FL FIX	CRAIG, FL VORTAC	18000	45000
CRAIG, FL VORTAC	SAVANNAH, GA VORTAC	18000	45000
SAVANNAH, GA VORTAC	CHARLESTON, SC VORTAC	18000	45000
§ 95.7073	**Jet Route J73 is Amended to Delete**		
DOLPHIN, FL VORTAC	LA BELLE, FL VORTAC	18000	45000
LA BELLE, FL VORTAC	LAKELAND, FL VORTAC	18000	45000
LAKELAND, FL VORTAC	SEMINOLE, FL VORTAC	18000	45000
SEMINOLE, FL VORTAC	LAGRANGE, GA VORTAC	18000	45000

FROM	TO	MEA	MAA
	Is Amended by Adding		
WYATT, GA FIX	LAGRANGE, GA VORTAC	18000	45000
§ 95.7075	**Jet Route J75 is Amended to Delete**		
DOLPHIN, FL VORTAC	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	TAYLOR, FL VORTAC	18000	45000
TAYLOR, FL VORTAC	COLUMBIA, SC VORTAC	18000	45000
COLUMBIA, SC VORTAC	GREENSBORO, NC VORTAC	18000	45000
§ 95.7079	**Jet Route J79 is Amended to Delete**		
KEY WEST, FL VORTAC	DOLPHIN, FL VORTAC	18000	45000
DOLPHIN, FL VORTAC	PALM BEACH, FL VORTA	18000	45000
PALM BEACH, FL VORTAC	TREASURE, FL VORTAC	18000	45000
TREASURE, FL VORTAC	ORMOND BEACH, FL VORTAC	18000	45000
ORMOND BEACH, FL VORTAC	CHARLESTON, SC VORTAC	18000	45000
§ 95.7081	**Jet Route J81 is Amended to Delete**		
DOLPHIN, FL VORTAC	PAHOKEE, FL VOR/DME	18000	45000
PAHOKEE, FL VOR/DME	ORLANDO, FL VORTAC	18000	45000
ORLANDO, FL VORTAC	CECIL, FL VOR	18000	45000
CECIL, FL VOR	COLLIERS, SC VORTAC	18000	45000
	Is Amended by Adding		
DUNKN, GA FIX	COLLIERS, SC VORTAC	18000	45000
§ 95.7085	**Jet Route J85 is Amended to Delete**		
DOLPHIN, FL VORTAC	LLAKE, FL FIX	18000	45000
LLAKE, FL FIX	INPIN, FL FIX	18000	45000
INPIN, FL FIX	GATORS, FL VORTAC	18000	45000
GATORS, FL VORTAC	TAYLOR, FL VORTAC	18000	45000
TAYLOR, FL VORTAC	ALMA, GA VORTAC	18000	45000
§ 95.7089	**Jet Route J89 is Amended to Delete**		
HITTR, FL FIX	VALDOSTA, GA VOR/DME	18000	45000
VALDOSTA, GA VOR/DME	ATLANTA, GA VORTAC	18000	45000
	Is Amended by Adding		
ICBOD, GA FIX	ATLANTA, GA VORTAC	18000	45000
§ 95.7091	**Jet Route J91 is Amended to Delete**		
INPIN, FL WP	CROSS CITY, FL VORTAC	18000	45000
CROSS CITY, FL VORTAC	ATLANTA, GA VORTAC	24000	45000
	Is Amended by Adding		
JOHNN, GA FIX	ATLANTA, GA VORTAC	24000	45000
§ 95.7103	**Jet Route J103 is Amended to Delete**		
ORMOND BEACH, FL VORTAC	SAVANNAH, GA VORTAC	18000	45000
§ 95.7113	**Jet Route J113 is Amended to Delete**		
VIRGINIA KEY, FL VOR/DME	CRAIG, FL VORTAC	18000	45000
§ 95.7119	**Jet Route J119 is Amended to Delete**		
ST PETERSBURG, FL VORTAC	TAYLOR, FL VORTAC	18000	45000
§ 95.7121	**Jet Route J121 is Amended to Delete**		
CRAIG, FL VORTAC	CHARLESTON, SC VORTAC	18000	45000
§ 95.7151	**Jet Route J151 is Amended to Delete**		
CROSS CITY, FL VORTAC	VULCAN, AL VORTAC	26000	45000

FROM	TO	MEA	MAA
§ 95.7165 Jet Route J165 is Amended by Adding			
DWYTE, SC FIX	RICHMOND, VA VORTAC	18000	45000
Is Amended to Delete			
CHARLESTON, SC VORTAC	RICHMOND, VA VORTAC	#18000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
§ 95.7174 Jet Route J174 is Amended to Delete			
CRAIG, FL VORTAC	CHARLESTON, SC VORTAC	18000	45000
§ 95.7207 Jet Route J207 is Amended to Delete			
SAVANNAH, GA VORTAC	FLORENCE, SC VORTAC	24000	45000
§ 95.7208 Jet Route J208 is Amended to Delete			
ATHENS, GA VOR/DME	LIBERTY, NC VORTAC	#	45000
#UNUSABLE			
LIBERTY, NC VORTAC	HOPEWELL, VA VORTAC	18000	45000
§ 95.7209 Jet Route J209 is Amended to Delete			
GREENWOOD, SC VORTAC	RALEIGH/DURHAM, NC VORTAC	18000	45000
§ 95.7210 Jet Route J210 is Amended to Delete			
DUNKN, GA FIX	VANCE, SC VORTAC	18000	45000
§ 95.7233 Jet Route J233 is Amended to Read in Part			
KIRKSVILLE, MO VORTAC	WATERLOO, IA VOR/DME	18000	27000
§ 95.7614 Jet Route J614 is Amended to Delete			
SARASOTA, FL VOR/DME	LEE COUNTY, FL VORTAC	18000	45000
LEE COUNTY, FL VORTAC	DOLPHIN, FL VORTAC	18000	45000
§ 95.7616 Jet Route J616 is Amended to Delete			
SARASOTA, FL VOR/DME	LA BELLE, FL VORTAC	18000	45000
LA BELLE, FL VORTAC	DOLPHIN, FL VORTAC	18000	45000

Airway Segment		Changeover points	
From	To	Distance	From
§ 95.8005 Jet Routes Changeover Points J47 Is Amended to Delete Changeover Points			
COLUMBIA, SC VORTAC	SPARTANBURG, SC VORTAC	10	COLUMBIA.
J89 is Amended to Add Changeover Point			
ATLANTA, GA VORTAC	VALDOSTA, GA VOR/DME	90	ATLANTA.
Is Amended to Modify Changeover Point			
LOUISVILLE, KY VORTAC	ATLANTA, GA VORTAC	148	LOUISVILLE.
J165 is Amended to Add Changeover Point			
RICHMOND, VA VORTAC	CHARLESTON, SC VORTAC	152	RICHMOND.

[FR Doc. 2020–00322 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31290; Amdt. No. 3886]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 16, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 27, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
30–Jan–20	CA	San Diego/El Cajon	Gillespie Field	9/3264	11/20/19	This NOTAM, published in Docket No. 31287, Amdt No. 3883, TL 20–03 84 FR 70419), is hereby rescinded in its entirety.
30–Jan–20	MT	Twin Bridges	Twin Bridges	9/3989	11/20/19	This NOTAM, published in Docket No. 31287, Amdt No. 3883, TL 20–03 84 FR 70419), is hereby rescinded in its entirety.
30–Jan–20	MT	Twin Bridges	Twin Bridges	9/3990	11/20/19	This NOTAM, published in Docket No. 31287, Amdt No. 3883, TL 20–03 84 FR 70419), is hereby rescinded in its entirety.
30–Jan–20	OR	Baker City	Baker City Muni	9/8453	11/26/19	This NOTAM, published in Docket No. 31287, Amdt No. 3883, TL 20–03 84 FR 70419), is hereby rescinded in its entirety.
30–Jan–20	FL	Orlando	Orlando Sanford Intl	9/0518	12/16/19	RNAV (GPS) RWY 9L, Amdt 3A.
30–Jan–20	TN	Memphis	Memphis Intl	9/2470	12/11/19	RNAV (GPS) RWY 36C, Amdt 1C.
30–Jan–20	TN	Memphis	Memphis Intl	9/2471	12/11/19	ILS OR LOC RWY 36C, CAT II/III, Amdt 3C.
30–Jan–20	GA	Canon	Franklin County	9/2488	12/11/19	RNAV (GPS) RWY 8, Orig-A.
30–Jan–20	GA	Canon	Franklin County	9/2489	12/11/19	RNAV (GPS) RWY 26, Orig-B.
30–Jan–20	TX	Waco	TSTC Waco	9/4364	12/16/19	ILS OR LOC RWY 17L, Amdt 13C.
30–Jan–20	FL	Orlando	Orlando Sanford Intl	9/5078	12/16/19	ILS OR LOC RWY 9R, Amdt 1A.
30–Jan–20	FL	Orlando	Orlando Sanford Intl	9/5580	12/16/19	RNAV (GPS) RWY 9R, Amdt 1A.
30–Jan–20	FL	Punta Gorda	Punta Gorda	9/5776	12/18/19	RNAV (GPS) RWY 33, Amdt 1.
30–Jan–20	MD	Frederick	Frederick Muni	9/5839	12/18/19	Takeoff Minimums and Obstacle DP, Amdt 4.
30–Jan–20	NY	Ithaca	Ithaca Tompkins Rgnl	9/6370	12/13/19	RNAV (GPS) Y RWY 14, Orig-A.
30–Jan–20	NY	Ithaca	Ithaca Tompkins Rgnl	9/6371	12/13/19	RNAV (GPS) RWY 32, Orig-B.
30–Jan–20	OR	Baker City	Baker City Muni	9/6461	12/17/19	VOR–A, Amdt 1B.
30–Jan–20	OH	Urbana	Grimes Field	9/7303	12/16/19	RNAV (GPS) RWY 2, Amdt 1B.
30–Jan–20	OH	Urbana	Grimes Field	9/7305	12/16/19	RNAV (GPS) RWY 20, Amdt 1A.
30–Jan–20	NY	New York	John F. Kennedy Intl	9/7735	12/17/19	VOR RWY 31L, Orig.
30–Jan–20	WI	Ephraim	Ephraim-Gibraltar	9/7917	12/17/19	RNAV (GPS) RWY 14, Orig-A.
30–Jan–20	WI	Ephraim	Ephraim-Gibraltar	9/7918	12/17/19	RNAV (GPS) RWY 32, Orig-A.
30–Jan–20	CA	Atwater	Castle	9/8184	12/17/19	RNAV (GPS) RWY 13, Amdt 1.
30–Jan–20	OH	Wilmington	Wilmington Air Park	9/8203	12/18/19	ILS OR LOC RWY 22L, ILS RWY 22L (CAT II), Orig-B.
30–Jan–20	OH	Wilmington	Wilmington Air Park	9/8212	12/18/19	ILS OR LOC RWY 4L, Amdt 4C.
30–Jan–20	OH	Wilmington	Wilmington Air Park	9/8213	12/18/19	ILS OR LOC RWY 4R, Orig-B.
30–Jan–20	OH	Wilmington	Wilmington Air Park	9/8217	12/18/19	RNAV (GPS) RWY 22R, Orig-B.
30–Jan–20	OH	Wilmington	Wilmington Air Park	9/8219	12/18/19	RNAV (GPS) RWY 4L, Orig-B.

[FR Doc. 2020–00328 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31289; Amdt. No. 3885]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 16, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. *It, therefore*—(1) is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on December 27, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 30 January 2020

Chevak, AK, Chevak, RNAV (GPS) RWY 2, Amdt 1
Chevak, AK, Chevak, RNAV (GPS) RWY 20, Amdt 1
Chevak, AK, Chevak, Takeoff Minimums and Obstacle DP, Amdt 2
Coolidge, AZ, Coolidge Muni, VOR RWY 5, Amdt 1
Tucson, AZ, Tucson Intl, ILS OR LOC RWY 11L, Amdt 14B
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 11R, Orig-C
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 21, Orig-C
Tucson, AZ, Tucson Intl, RNAV (GPS) Z RWY 29R, Amdt 2E
Tucson, AZ, Tucson Intl, VOR OR TACAN RWY 29R, Amdt 2F
Monterey, CA, Monterey Rgnl, LOC RWY 28L, Amdt 5
Gainesville, FL, Gainesville Rgnl, VOR RWY 25, Orig-D, CANCELLED
Gainesville, FL, Gainesville Rgnl, VOR RWY 29, Orig-E, CANCELLED
Gainesville, FL, Gainesville Rgnl, VOR/DME RWY 7, Orig-D, CANCELLED
Gainesville, FL, Gainesville Rgnl, VOR/DME RWY 11, Orig-D, CANCELLED
Honolulu, HI, Daniel K Inouye Intl, ILS RWY 8L, Amdt 24
Honolulu, HI, Daniel K Inouye Intl, LDA RWY 26L, Amdt 6
Honolulu, HI, Daniel K Inouye Intl, RNAV (GPS) Y RWY 4R, Amdt 3
Honolulu, HI, Daniel K Inouye Intl, RNAV (GPS) Y RWY 8L, Amdt 3
Honolulu, HI, Daniel K Inouye Intl, RNAV (RNP) Z RWY 4R, Amdt 2
Honolulu, HI, Daniel K Inouye Intl, RNAV (RNP) Z RWY 8L, Amdt 3
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 22L, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 22L, Amdt 3
Louisville, KY, Louisville Muhammad Ali Intl, LOC RWY 29, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, RNAV (GPS) RWY 14, Amdt 1B
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 5, Amdt 10A
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 4L (CLOSE PARALLEL), Amdt 1C
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 22R (CLOSE PARALLEL), Amdt 1B
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Z RWY 4L (CLOSE PARALLEL), ILS PRM Z RWY 4L (CLOSE PARALLEL) (CAT II), ILS PRM Z RWY 4L (CLOSE PARALLEL) (CAT III), Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Z RWY 22R (CLOSE PARALLEL), ILS PRM Z RWY 22R (CLOSE PARALLEL) (SA CAT I), ILS PRM Z RWY 22R (CLOSE PARALLEL) (SA CAT II), Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 4L, Amdt 1C
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 22R, Amdt 1B
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 4L, ILS Z RWY 4L (CAT II), ILS Z RWY 4L (CAT III), Amdt 4C
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 22R, ILS Z RWY 22R (SA CAT I), ILS Z RWY 22R (SA CAT II), Amdt 4B
Lansing, MI, Capital Region Intl, ILS OR LOC RWY 28L, Amdt 28
Cuba, MO, Cuba Muni, RNAV (GPS) RWY 36, Orig-D
Harlowton, MT, Wheatland County at Harlowton, RNAV (GPS) RWY 9, Orig
Harlowton, MT, Wheatland County at Harlowton, Takeoff Minimums and Obstacle DP, Orig
Lake Placid, NY, Lake Placid, RNAV (GPS)-A, Amdt 2A
Toledo, OH, Toledo Express, ILS OR LOC RWY 7, Amdt 29
Shawnee, OK, Shawnee Rgnl, ILS OR LOC RWY 17, Amdt 3
Dubois, PA, Dubois Rgnl, RNAV (GPS) RWY 7, Amdt 2
Dubois, PA, Dubois Rgnl, RNAV (GPS) RWY 25, Amdt 1A
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV (GPS) RWY 31, Orig
El Paso, TX, El Paso Intl, RNAV (RNP) X RWY 8R, Orig
El Paso, TX, El Paso Intl, RNAV (RNP) Y RWY 8R, Orig
Waco, TX, Mc Gregor Executive, VOR RWY 17, Amdt 11
Baraboo, WI, Baraboo-Wisconsin Dells Rgnl, LOC RWY 1, Amdt 3
Baraboo, WI, Baraboo-Wisconsin Dells Rgnl, RNAV (GPS) RWY 19, Amdt 3
Baraboo, WI, Baraboo-Wisconsin Dells Rgnl, VOR–A, Amdt 13

Rescinded

On November 29, 2019 (84 FR 65673), the FAA published an Amendment in Docket No. 31283, Amdt No. 3879, to Part 97 of the Federal Aviation Regulations under sections 97.27, 97.29, 97.33, 97.37. The following entries for Cloquet, MN, Pierre, SD, and Mineral Wells, TX, effective January 30, 2020, are hereby rescinded in its entirety:

Cloquet, MN, Cloquet Carlton County, NDB RWY 18, Amdt 4B
Cloquet, MN, Cloquet Carlton County, NDB RWY 36, Amdt 5B
Cloquet, MN, Cloquet Carlton County, Takeoff Minimums and Obstacle DP, Amdt 3
Pierre, SD, Pierre Rgnl, RNAV (GPS) RWY 31, Amdt 1
Mineral Wells, TX, Mineral Wells Rgnl, ILS OR LOC RWY 31, Amdt 1A

Rescinded

On December 12, 2019 (84 FR 67862), the FAA published an Amendment in Docket No. 31285, Amdt No. 3881, to Part 97 of the Federal Aviation Regulations under sections 97.23. The following entry for Syracuse, NY, effective January 30, 2020, is hereby rescinded in its entirety:

Syracuse, NY, Syracuse Hancock Intl, VOR RWY 15, Amdt 23B, CANCELLED

[FR Doc. 2020–00329 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0963]

RIN 1625–AA00

Safety Zone; Morro Bay Harbor Entrance; Morro Bay, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone in the navigable waters of the Morro Bay Harbor Entrance. This temporary safety zone is being established to reduce significant hazards subject to the vessels, the harbor, and the public during periods of poor weather conditions. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Los Angeles-Long Beach, or her designated representative.

DATES: This rule is effective without actual notice from January 16, 2020 until 11:59 p.m. on March 15, 2020. For purposes of enforcement, actual notice will be used from 12:01 a.m. on January 15, 2020 through January 16, 2020. The

safety zone will be enforced when the COTP or her designated representative deems it necessary because of hazardous, breaking, or rough bar conditions, which will be broadcasted via local Broadcast Notice to Mariners.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0963 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email the Waterways Management Branch, U.S. Coast Guard Sector Los Angeles-Long Beach; telephone (310) 521–3860, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM and responding to comments would be impracticable in this case due to the short notice of the severe weather predictions that may affect the Morro Bay Harbor Entrance beginning on or around January 15th, 2020.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**, as delaying the effective date of this rule would be impracticable because the weather conditions are expected to begin on or around January 15th, 2020 and we need to have this rule in place to protect vessels and persons transiting the area.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP), Los Angeles-Long Beach has determined that potential hazards exist during certain weather conditions from January, 2020 to March, 2020, for all recreational and commercial vessels operating in the vicinity of the Morro Bay Harbor Entrance. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the persons and vessels that operate on and in the vicinity of the Morro Bay Harbor Entrance.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from January 15th, 2020 through March 15th, 2020, encompassing all navigable waters from the surface to the sea floor near the inside and outside of the mouth of the Morro Bay Harbor entrance; within the following coordinates, in approximate position: From a point on the shoreline at 35°22.181″ N 120°52.207″ W, thence westward to 35°22.181″ N 120°52.538″ W, thence southward to 35°21.367″ N 120°52.538″ W, thence eastward to a point on the shoreline at 35°21.366″ N 120°51.717″ W, thence northward along the shoreline to a point inside the Morro Bay Harbor to 35°22.153″ N 120°51.698″ W, thence northwestward to a point on land at 35°22.233″ N 120°51.847″ W, thence southward along the shoreline to the beginning. These coordinates are based on North American Datum of 1983. The Coast Guard will turn on the Morro Bay Rough Bar Warning Light (LLNR 3877; 35°22.256″ N 120°51.526″ W) to signify to mariners that rough bar conditions are taking place at the entrance. No vessel or person would be permitted to operate in the safety zone without obtaining permission from the COTP or her designated representative. The safety zone will only be enforced when the COTP or her designated representative deems it necessary because of the rough bar conditions, and enforcement will cease immediately upon conditions returning to safe levels. Sector Los Angeles-Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of Morro Bay Harbor, CA, as required, for approximately 2 months and during a time of year when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone, limited in duration, when required by significant safety hazards. This rule is categorically excluded from further review under paragraph L60(c) of Section L of the Department of Homeland Security Instruction Manual 023–01–001–01 (series). An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–015 to read as follows:

§ 165.T11–015 Safety Zone; Morro Bay Harbor Entrance; Morro Bay, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor near the inside and outside of the mouth of the Morro Bay Harbor entrance; within the following coordinates, in approximate position: From a point on the shoreline at 35°22.181″ N 120°52.207″ W, thence westward to 35°22.181″ N 120°52.538″ W, thence southward to 35°21.367″ N 120°52.538″ W, thence eastward to a point on the shoreline at 35°21.366″ N 120°51.717″ W, thence northward along the shoreline to a point inside the Morro Bay Harbor to 35°22.153″ N 120°51.698″ W, thence northwestward to a point on land at 35°22.233″ N 120°51.847″ W, thence southward along the shoreline to the beginning. This coordinate is based on North American Datum of 1983.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles-Long Beach on VHF–FM Channel 16 or call at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. January 15, 2020, to 11:59 p.m. March 15, 2020. The Coast Guard will turn on the Morro Bay Rough Bar Warning Light (Light List Number (LLNR) 3877; 35°22.256″ N 120°51.526″ W) to signify to mariners that rough bar conditions are taking place at the entrance. No vessel or person would be permitted to operate in the safety zone without obtaining

permission from the COTP or her designated representative. The safety zone will only be enforced when the COTP or her designated representative deems it necessary because of the rough bar conditions, and enforcement will cease immediately upon conditions returning to safe levels. General boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

Dated: January 7, 2020.

R.E. Ore,

Captain, U.S. Coast Guard, Acting Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 2020–00375 Filed 1–15–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0710; FRL–10004–19–Region 4]

Air Plan Approval; GA; Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision provided by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, via a letter dated July 2, 2018. Specifically, EPA is approving changes to Georgia's Nonattainment New Source Review (NNSR) permitting rules. This action is being finalized pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This rule will be effective February 18, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0710. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The New Source Review (NSR) program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction. The NSR permitting program applies to new construction and to modifications of existing sources. New construction and modifications that emit ''regulated NSR pollutants'' over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.

Major NSR permits for sources that are located in attainment or unclassifiable areas are referred to as Prevention of Significant Deterioration (PSD) permits. Major NSR permits for sources located in nonattainment areas and that emit pollutants above the specified thresholds for which the area is in nonattainment are referred to as NNSR permits.

A new stationary source is subject to major NSR requirements if its potential to emit (PTE) a regulated NSR pollutant exceeds certain emission thresholds. If it exceeds the applicable threshold, the NSR regulations define it as a ''major stationary source.'' An existing major stationary source triggers major NSR permitting requirements when it undergoes a ''major modification,'' which occurs when a source undertakes a physical change or change in method of operation (*i.e.,* a ''project'') that would result in (1) a significant emissions increase from the project, and (2) a significant net emissions increase from the source. *See, e.g.,* 40 CFR 52.21(b)(2)(i) and (b)(52). Georgia Rule 391–3–1–.03(8)—*Permit Requirements* contains the State's NNSR permitting requirements and identifies the counties subject to those requirements.

Effective January 6, 1992, EPA designated 13 counties surrounding Atlanta, Georgia, as nonattainment for the 1-hour ozone NAAQS and classified them as a ''serious'' nonattainment area (hereinafter referred to as the Atlanta 1-hour Ozone Area).[1] *See* 56 FR 56694 (November 6, 1991). Effective January 1, 2004, the Atlanta 1-hour Ozone Area was reclassified as a ''severe'' nonattainment area. *See* 68 FR 55469 (September 26, 2003). This classification requires, among other things, that a ''major source'' and a ''major stationary source'' be defined to include certain sources that emit or have the potential to emit 25 tons or more of nitrogen oxides (NO_X) or volatile organic compounds (VOC) and that emissions offsets apply at a ratio of at least 1.3 or 1.2:1 (depending on the criteria in CAA section 182(d)(2)).[2] EPA redesignated the Atlanta 1-hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005. *See* 70 FR 34660 (June 15, 2005). Effective June 15, 2005, EPA revoked the 1-hour ozone NAAQS. *See* 69 FR 23951 (April 30, 2004) and 70 FR 44470 (August 3, 2005).

Effective June 15, 2004, 20 counties surrounding Atlanta were designated as nonattainment and classified as a ''marginal'' nonattainment area for the 1997 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 1997 8-hour Ozone Area).[3] *See* 69 FR 23858 (April 30, 2004). Effective April 7, 2008, the Atlanta 1997 8-hour Ozone Area was reclassified as a ''moderate'' nonattainment area. *See* 73 FR 12013 (March 6, 2008). This classification requires, among other things, that a ''major source'' and a ''major stationary source'' be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_X or VOC and that emissions offsets apply at a ratio of at least 1.15:1. The Atlanta 1997

[1] The Atlanta 1-hour Ozone Area consisted of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. The 1-hour ozone NAAQS was set at 0.12 parts per million (ppm) with attainment defined when the expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 ppm, is equal to or less than one.

[2] For ozone, the offset ratio is the ratio of the total emissions reductions of NO_X or VOCs to the total increased emissions of those pollutants.

[3] The Atlanta 1997 8-hour Ozone Area consisted of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The 1997 8-hour ozone NAAQS was set at 0.08 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

8-hour Ozone Area was redesignated to attainment, effective January 1, 2014. *See* 78 FR 72040 (December 2, 2013). Effective April 6, 2015, EPA revoked the 1997 8-Hour Ozone NAAQS. *See* 80 FR 12264 (March 6, 2015).

Effective July 20, 2012, 15 counties surrounding Atlanta were designated as nonattainment and classified as a ''marginal'' nonattainment area for the 2008 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2008 8-hour Ozone Area).[4] *See* 77 FR 30088 (May 21, 2012). This classification requires, among other things, that a ''major source'' and a ''major stationary source'' be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_X or VOC and that emissions offsets apply at a ratio of at least 1.1:1. The Atlanta 2008 8-hour Ozone Area was redesignated to attainment, effective June 2, 2017. *See* 82 FR 25523 (June 2, 2017).

Approximately one year later, on June 4, 2018, EPA published a **Federal Register** document announcing that seven counties surrounding Atlanta were designated as nonattainment and classified as a ''marginal'' nonattainment area for the 2015 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2015 8-hour Ozone Area).[5] *See* 83 FR 25776 (effective August 3, 2018). As discussed above, the ''marginal'' classification requires that a ''major source'' and a ''major stationary source'' be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_X or VOC and that emissions offsets apply at a ratio of at least 1.1:1.

Due to the redesignations identified above and the nonattainment designation for the 2015 8-hour ozone NAAQS, the ozone nonattainment area surrounding Atlanta now consists of seven counties—Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. Via a letter dated July 2, 2018, GA EPD provided a SIP revision to EPA to modify the NNSR requirements in Rule 391–3–1–.03(8)—*Permit Requirements.*[6]

See EPA's notice of proposed rulemaking (NPRM) published on September 9, 2019 (84 FR 47213) for further detail on the changes made in the July 2, 2018 submission. Comments were due on October 9, 2019, and EPA received no comments on the NPRM. EPA is approving the changes to Georgia's Rule 391–3–1–.03(8) because these changes are consistent with the CAA.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–1–.03(8)—*Permit Requirements,* which revises the State's permit rules, state effective June 18, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[7]

III. Final Action

EPA is approving the aforementioned changes to Georgia's SIP, submitted in a letter dated July 2, 2018, that make revisions to Rule 391–3–1–.03(8)—*Permit Requirements.* EPA views this change as being consistent with the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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

[4] The Atlanta 2008 8-hour Ozone Area consisted of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. The 2008 8-hour ozone NAAQS is set at 0.075 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

[5] The Atlanta 2015 8-hour Ozone Area consists of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

[6] EPA received the submittal on July 6, 2018. Georgia's cover letter also requested revision to Rule 391–3–1–.03(10)—*Title V Operating Permits.* However, EPA is not acting on that revision because Rule 391–3–1–.03(10) is not part of the SIP.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Nitrogen oxides.

Dated: January 2, 2020.

Blake M. Ashbee,

Acting Regional Administrator, Region 4.

For the reasons discussed in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. Section 52.570(c) is amended under the heading Permits by revising the entry for ''391–3–1–.03(8)'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
391–3–1–.03	Permits			
*	*	*	*	* * *
391–3–1–.03(8)	Permit Requirements	6/18/2018	1/16/2020, [Insert citation of publication].	Except paragraph (e), approved on 11/22/10 with a state-effective date of 7/25/07.
*	*	*	*	* * *

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[FR Doc. 2020–00326 Filed 1–15–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0177; FRL–10003–44–Region 6]

Air Plan Approval; New Mexico; City of Albuquerque-Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County submitted on January 18, 2018, that includes supplemental information provided on April 30, 2019. The EPA is approving newly adopted Minor New Source Review (MNSR) permitting regulations which waive specific permitting requirements for certain sources and create new procedures for authorizing construction and modification of these sources.

DATES: This rule is effective on February 18, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0177. 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, *e.g.,* 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 EPA Region 6 Office, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Rick Barrett, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Dallas, TX 75270, 214–665–7227, *barrett.richard@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214–665–7253.

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

I. Background

The background for this action is discussed in detail in our June 5, 2019 proposal (84 FR 26057). In that document we proposed to approve revisions to the City of Albuquerque-Bernalillo County SIP submitted on January 18, 2018, including supplemental information provided on April 30, 2019. The revisions addressed in our proposal included newly adopted Minor New Source Review (MNSR) permitting regulations which waive specific permitting requirements for certain sources and create new procedures for authorizing construction and modification of these sources. The revisions created procedures which allow owners and operators of eligible gasoline dispensing facilities (GDF), and emergency stationary reciprocating

internal combustion engines (ES–RICE), to apply for an Air Quality Notification (AQN) rather than a construction permit. The SIP action proposes no change in emission levels or controls, and will not result in an increase of emissions or ambient concentration of any compounds.

We received comments on the proposal from several commenters. The full text of the comment letters received during the public comment period, which closed on July 5, 2019, is included in the publicly posted docket associated with this action at *www.regulations.gov.* The EPA provides a summary of the comments received and corresponding responses below.[1]

II. Responses to Comments

Comment: Several commenters stated that before any decision is made on the proposal, the City of Albuquerque Environmental Health Department (EHD) should come to their communities and give the residents of Albuquerque and Unincorporated Bernalillo County, neighborhood associations, coalitions, and interested persons an opportunity to learn about the proposal, participate in a discussion, get questions answered, and express concerns in a public meeting forum in English and Spanish.

They further stated that the EHD did not notify the residents of Albuquerque and Unincorporated Bernalillo County of their proposal; did not conduct any public meetings with neighborhood associations, coalitions or the public; and did not post on their website their proposal to EPA to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County.

Response: EPA regulations require that states must provide the public with notice of plans or plan revisions, opportunity to submit written comments, and either automatically hold a public hearing on the proposed plan or revision or provide the public with the opportunity to request such a public hearing. See 40 CFR 51.102. Notice should include making the proposed plan or revision available for public inspection in at least one location in each region to which it will apply. See 40 CFR 51.102(d)(2). A notice of public hearing to consider the EHD Petition for rulemaking was published on September 26, 2017, in the New Mexico Register and in the Albuquerque Journal on the same day. See Attachment C, 4. Pleadings filed with Air Board. The notice met all the applicable Federal regulations. It solicited written comments and contained the date, place, and time of the hearing. The notice also stated that the public could obtain the reasoning for EHD's proposed rulemaking, the rulemaking record of the EHD, and drafts of the proposed regulatory changes on EHD's website.[2] Additionally, the notice, which was published in the New Mexico Register and the Albuquerque Journal, provided a link to the agenda for the hearing. As noted in the public notices published in the two local newspapers, on November 8, 2017, a public hearing was held in accordance with State and local law and the applicable public hearing requirements. EHD considered all the comments it received and discussed these in its hearing testimony. Public comments were made via letters, emails and in testimony prior to, and during, the November 8, 2017, hearing. See Attachment C, 2. Public Comment, and Attachment C, 4. Pleadings filed with Air Board.

Furthermore, on May 30, 2017, before the formal public notification discussed above, EHD sent copies of a draft of the proposed regulations to Albuquerque and Bernalillo County neighborhood associations; persons holding air quality permits for GDF or ES–RICE; and members of the community on the email list-serve of the Air Board.[3] EHD's cover letter invited these stakeholders to two public comment meetings held on June 28, 2017, one held in the afternoon and one in the evening. Four people attended the afternoon meeting. No one attended the evening meeting.[4] EHD received four written comments on its draft regulations. An announcement of the petition filing was distributed by email to the list-serve of the Air Board on August 29, 2017. This early engagement is not required by the EPA rules.

Under these circumstances we do not agree with the commenters' assertion that EHD did not notify the residents of Albuquerque and Unincorporated Bernalillo County of their proposal, and we do not agree that we should not approve the plan revisions for a purported lack of adequate notice or opportunity to comment.

Comment: Several commenters stated that they want EPA to disapprove the SIP revision because it does not respect the basic human rights of residents of Albuquerque to be treated with fairness, decency, and respect, nor their basic right to due process in the decision-making that affects their communities. They requested that EPA remand the proposed regulations back to Albuquerque-Bernalillo County Air Quality Control Board to amend its request in order to address public participation, public health, the locating of multiple source emitters close to each other, and address appeal rights.

Additionally, several commenters stated that public participation should not be considered a burden and expressed concern about the long term physical and emotional health effects of the proposal, especially for the more vulnerable members of the population—the elderly and children. Commenters claimed that EPA's position is that since Albuquerque is in compliance with the National Ambient Air Quality Standards (NAAQS), public participation in Minor New Source Review process is not necessary, stating that such rationale is not respectful of the community living in this area that is subjected to the worst air quality in the city and does not take into consideration environmental justice principles. They further allege that both EPA and EHD failed to take public health into consideration, and as a consequence, the public will be affected by emergency room visit costs, and long-term health implications that affect school and work attendance.

Response: The comments that pertain to public participation have been addressed in a response above. In short, the EPA does not agree that there was a failure to comply with the public notice and comment-related provisions of the Act or the relevant EPA regulations and does not agree that the revisions should be disapproved because of the comments relating to an asserted lack of public participation. Regarding the commenters' other requests that EPA deny or remand the EHD's SIP revision, EPA is required to approve a SIP revision if it meets all the applicable Federal requirements. See CAA 110(k)(3). As noted in our proposal, in addition to the preconstruction permitting program requirements of CAA section 110(a)(2)(C) and 40 CFR 51.160 through 51.164, our evaluation must ensure that the proposed plan revisions comply with section 110(l) of the CAA, which states that the EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the Act. Thus,

[1] Note that comments are grouped together into categories to assist the reader.

[2] See *http://www.cabq.gov/airquality/air-quality-control-board,* at the link entitled ''Library of current Rulemaking Petitions and all related documents.''

[3] See Attachment C, 4. Pleadings filed with Air Board.

[4] See Attachment C, 4. Pleadings filed with Air Board.

under CAA section 110(l), the proposed MNSR SIP revision must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. The commenters misstate and oversimplify EPA's position. It is not our position that public participation in the Minor New Source Review process is not necessary because Albuquerque is in compliance with the NAAQS. EPA's statutory responsibilities in reviewing a SIP are to ensure it meets all the applicable requirements of the Act and the corresponding Federal regulations. CAA section 110(a)(2)(C) requires regulation of the modification or construction of any stationary source within the areas covered by the SIP as necessary to assure that the NAAQS are achieved. The minor NSR regulations found at 40 CFR 51.160 through 51.164 specify the legally enforceable procedures and requirements which are applicable to state minor NSR programs. Federal regulations allow states to identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review under the minor NSR program. See 40 CFR 51.160(e). To determine whether a specific source type can be exempted from complying with a state's approved minor NSR program, EPA must examine whether the state has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. See 40 CFE 51.160(a) and (e) and CAA section 110(l). Additionally, our evaluation must ensure that the submittal complies with section 110(l) of the CAA before it can be approved into the SIP.

Similar to the exemptions provided for in EPA's Tribal NSR Rule, EHD seeks to exempt a small percentage of the total emissions emitted within its jurisdiction from minor NSR review. EPA estimates that GDFs are responsible for only 0.28% of the total emissions of volatile organic compounds (VOC) in Albuquerque-Bernalillo County. This percentage is not anticipated to change with the approval of the SIP revision. VOC emissions from GDF and ES–RICE are federally regulated by the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for GDF found in 40 CFR part 63, subpart CCCCCC; and by the NESHAP for ES–RICE found in 40 CFR part 63, subpart ZZZZ. State regulatory requirements for GDF and ES–RICE emissions of VOC are found at State regulation 20.11.65 NMAC—Volatile Organic Compounds. These Federal and State regulations impose emission limitations, management practices, and testing and monitoring requirements in order to demonstrate compliance with those requirements.

For GDF with throughput of more than 100,000 gallons per month, the applicable Federal regulation (40 CFR part 63, subpart CCCCCC) reduces emissions by about 90% by requiring the use of Stage I vapor control. While smaller GDF are not required by Federal regulations to use Stage I vapor control, the Air Board's regulations (20.11.65 NMAC—Volatile Organic Compounds) requires most GDF with underground storage tanks larger than 3000 gallons to have Stage I vapor control. This captures many of the GDF with throughputs below 100,000 gallons per month. As a result, between Federal and local regulations, most GDF have pollution controls that reduce their emissions by about 90%. The only ones that do not have these controls are the very small GDF (typically small fleet owners) with low throughput and associated limited potential to emit pollutants which are hazardous to human health and wellbeing.

Regarding ES–RICE, the pollutants which are emitted from ES–RICE and may be relevant to NAAQS attainment are: ozone, NO_2, PM, CO and SO_2. There are approximately 445 ES–RICEs in the County, and the applicable regulations only permit them to operate during emergencies, other than the few hours which are necessary each year to test and maintain the engines. See Attachment C, 4. Pleadings filed with Air Board. Because these emergency generators operate very few hours a year, their emissions are very low. When applying EHD's actual emission inventory estimates of 24 hours per year of operation, each ES–RICE will only emit about 0.26 tons per year (tpy) of combined pollutants.[5]

Emissions from these source categories are low enough that it is unlikely that such emissions would have a meaningful impact on continued NAAQS attainment. Moreover, the SIP revisions do not change or eliminate any of the controls required by NESHAP, and the approval of these SIP revisions does not obviate the need for GDF and ES–RICE sources to comply with all applicable NESHAP requirements—including emissions limitations. See Attachment C, 4. Pleadings filed with Air Board.

Concerning the public health considerations mentioned by the commenters, EPA was required by the CAA to promulgate NAAQS for pollutants which are considered harmful to public health. The CAA identifies two types of NAAQS—primary and secondary. The primary standards provide public health protection, including the protection of sensitive populations such as asthmatics, children, and the elderly. All areas within EHD's jurisdiction are currently in attainment for all NAAQS. See Attachment C, 4. Pleadings filed with Air Board, and 82 FR 29421 (June 29, 2017). The approval of this SIP revision will not cause any degradation of air quality, and EHD was legally obligated to demonstrate this fact to the EPA. Appendix V to 40 CFR part 51 requires that EHD submit to the EPA a demonstration that will show noninterference with the attainment of the NAAQS under Section 110(1) of the Clean Air Act. The Section 110(l) demonstration submitted to EPA showed that there will be no degradation of air quality and that Bernalillo County will continue its attainment status of the NAAQS to protect public health. See our proposal, 84 FR 26057, section III.C.

In their SIP submittal, EHD presented NAAQS monitoring data for each pollutant emitted by GDF and ES–RICE showing the concentration of each in the ambient air in the County compared to the relevant Federal standard. The data show the County area has been in attainment for all the NAAQS for at least the past ten years and has not been in violation of any NAAQS since 1996. The County has maintained attainment for the NAAQS the entire time during which Federal NESHAP emission requirements for these source categories have been in effect. EHD's proposal will not change those requirements, and thus, would not result in an increase in emissions. Review of the EHD NAAQS monitoring data showed that concentrations of most pollutants have trended downward or remained steady over at least the last ten years. These trends support that the air quality is improving overall in the County. See our proposal, 84 FR 26057, section III. C., and Attachment C, 4. Pleadings filed with Air Board. Therefore, we find that EHD's proposal will not interfere with attainment of any NAAQS. See Attachment C, 4. Pleadings filed with Air Board.

[5] When using an assumed maximum of 500 hours of operation per year for each ES–RICE, EPA has previously concluded that a 500 hours per year limit would result in combined pollutant (NO_2, PM, CO and SO_2) emissions of 5.5 tons per year or less from each ES–RICE. See 78 FR 15296 (March 11, 2013).

Based on these historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l), and that the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Although qualifying GDFs and ES–RICEs will now be exempt from the Minor NSR program, EHD will post on its website all Air Quality Notifications (AQN) issued during the previous month and all those issued that are currently active. See 20.11.39.15 NMAC. This information will include the name and location of each facility. It will also include information enabling members of the public to contact EHD about any AQN it has issued. Thus, the public will have access to the information for any GDF or ES–RICE that EHD has issued an AQN. Comments regarding the locating of multiple source emitters close to each other are addressed in the last response below.

Comment: Commenters stated that this proposed change is the latest effort to hinder public participation and further stated that perhaps informing the public, diligent review, and doing the job that taxpayers have paid staff at the Albuquerque Environmental Health Department to do is too burdensome.

Response: As discussed, above, in response to other comments, the EPA is required to approve SIP revisions that meet all applicable requirements, and the EPA has determined that these revisions meet such requirements. As also discussed, above, the EPA has determined that the submission reflects satisfaction of the public participation-related provisions of the Act and EPA's relevant regulations. In any event, regarding the comments which stated that the EHD approved the rule in order to relieve its administrative burden, EHD indicated that their proposed regulations are needed to allow EHD permitting staff to focus on permitting of larger sources with more significant air quality impacts, for which the applicable regulatory scheme provides more discretion and requires more technical judgment than the regulations that apply to GDF and ES–RICE. EHD also stated that the process associated with GDF permits has caused significant opportunity costs for the EHD that are not justified based on the amount of emissions produced by GDF. See Attachment C, 4. Pleadings filed with Air Board.

The EHD explained that GDF and ES–RICE represent a minimal potential contribution of pollutants to local air quality compared to emissions from other sources. Their experience has shown that a majority of permitting staff time has been devoted to managing the process required by existing Part 41 (11–20–41) for permit applications for these less significant contributors. EHD said that about 80% of their permit staff resources are spent in permitting these two source categories and devoting the majority of an air quality agency's permitting resources to sources with minimal impact on air quality is not a wise use of resources. EHD has determined that this imbalance in resource allocation does not serve the public interest because it distracts EHD from a focus on larger facilities with more potential to impact air quality, and, as explained above, EPA is required to approve all SIP revisions that meet the applicable requirements.

Comment: Some commenters stated that the proposed rule does not require air dispersion modeling, referring to a statement in EHD's proposal that ''the department shall not require any part 39 source to submit air dispersion modeling with its AQN application''.

Response: As noted, above, in response to other comments, VOC emissions from GDF and ES–RICE are inconsequential. Neither GDF nor ES–RICE require air quality dispersion modeling. GDFs emit VOCs in quantities which do not require modeling because their VOC emissions are less than the EHD minor NSR threshold level of 10 lbs/hr or 25 tpy. Their VOC emissions are modeled county-wide as an ozone component to determine whether they are in compliance with the ozone NAAQS.

ES–RICEs do not require modeling because of their infrequent and unpredictable hours of operation. Air quality dispersion modeling is done to predict the impact of expected emissions. The operation of an emergency generator is inherently unpredictable because it operates only during emergencies except for the few hours an engine must be operated periodically to maintain the engine's functionality. Thus, the necessary input to a model (the expected emissions) cannot be accurately provided to the modeler. Thus, modeling is not useful for emergency engine operation.

Recently, the EHD entered into a new contract with Sonoma Technology, Inc. (STI) to prepare the *Albuquerque/Bernalillo County Ground-Level Ozone Photochemical Modeling and Analysis.* This modeling study will emphasize ozone source contribution analysis to: Identify source contributions from mobile, industrial/stationary sources, and biogenic emissions; evaluate transport (international, interstate, and intrastate) versus local emissions contributions; evaluate events versus local emissions contributions to ozone; conduct VOC/NOx sensitivity analysis of ozone levels in Albuquerque-Bernalillo; and address other scenarios. This updated modeling will give EHD the most recent scientific analysis based on the most recent air quality information with which to determine what control strategies, if any, might be appropriate to protect Albuquerque-Bernalillo County attainment with the new 2015 ozone standard.

Comment: One commenter stated that they oppose approval of the SIP revision submitted by the EHD which waives permitting requirements for GDF because the EHD did not provide adequate justification for its request in 2017. The commenter alleges that EPA mischaracterizes the NAAQS ozone data as trending downward when the values appear to fluctuate. The commenter further stated that it is possible that the ozone data for 2017 and 2018 would show increases, with levels exhibiting a cyclic pattern and the same could be said for nitrogen dioxide. The commenter stated that there have been at least two years of particulate matter (PM_{10}) violations within the last 10 years, and that the most recent (2016) finding for sulphur dioxide shows a secondary violation. Further, the commenter claimed that the EPA staff recommendation for approval is not supported by adequate evidence.

Response: We do not agree with the commenter that the EHD did not provide adequate justification for its proposal request. As explained above, in order to determine whether a specific source type can be exempted from complying with a state's approved minor NSR program, EPA must examine whether the state has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. GDF and ES–RICE make up 62.2% of the 1088 authorized stationary sources in Albuquerque-Bernalillo County. See Attachment C, 4. Pleadings filed with Air Board. As we noted in our proposed approval, the only pollutants emitted from GDFs are VOC. The VOC emitted from GDFs account for only about 0.28% of the VOC in the entire County. Each ES–RICE only emits about

0.26 tpy of VOC, NO_2, PM, CO and SO_2 combined. Therefore, these sources generate emissions that are inconsequential to the area's ability to attain the NAAQS.

As noted, above, in response to other comments, a majority of EHD permitting staff time is spent on permits for GDF and ES–RICE although, relatively, they contribute very little to overall air pollution, and EHD determined that devoting most of its time to sources that have an inconsequential impact on air quality is not an effective use of public resources. See Attachment C, 4. Pleadings filed with Air Board. Further, GDF or ES–RICE which are located at a major source, or at a facility which requires an air quality construction permit because of other activities, would not be eligible for an AQN.

The SIP revision imposes the same air quality control requirements on GDF and ES–RICE as is currently applied through issuance of individualized permits and contains compliance mechanisms to assure that enforcement actions can be brought against owners or operators of these sources which receive an AQN. See Attachment C, 4. Pleadings filed with Air Board. EHD's proposal will improve EHD's permitting process by allowing it to dedicate more time to its larger and more complex air quality sources where more discretion and technical judgment are required. EHD's proposal does not result in any changes to the existing substantive air quality requirements for GDF and ES–RICE that are governed by NESHAP. See Attachment C, 4. Pleadings filed with Air Board. As explained in a response above, the SIP revision meets all Federal requirements for minor new source review and the requirements of section 110(l) of the Clean Air Act.

We disagree that we mischaracterized the NAAQS ozone data. As we discussed in our proposed approval, compliance with the 8-hour ozone standard has improved county-wide with ozone pollutant concentrations trending downward since the late 1980's. See EPA's Air Quality System (AQS) database. As shown on Table 1 in the proposal, the ozone concentration has declined overall from 0.073 ppm in 2006 to 0.065 ppm in 2016. See our proposal, 84 FR 26057, section III.C., page 26060. Further, local ambient ozone levels have been in decline since the 2010–2012 design value assessment period, and ozone concentrations since 2006 have remained below the Federal standard in effect at the time. EPA has amended the ozone NAAQS over time, lowering the concentration necessary for attainment. In 1997, EPA set the concentration at 0.084 parts per million. In 2008, EPA changed this to 0.075 parts per million. In 2015, EPA changed it again to 0.070 parts per million. Albuquerque and Bernalillo County have remained in continuous compliance with each new standard promulgated by EPA, and continue to be in compliance for 2017 and 2018. See *https://www.epa.gov/air-trends/air-quality-design-values.*

With regard to Nitrogen Dioxide (NO_2) levels, compliance with the 1-Year NO_2 and 1-hour NO_2 standards has improved county-wide with NO_2 pollutant concentrations trending downward since the late 1990's. The NO_2 levels have remained relatively stable for the last decade overall for both the 1-hour and annual standards. As shown on Table 2 in the proposal, the NO_2 concentration has declined overall from 15.4 parts per billion (ppb) in 2006 to 10.4 ppb in 2016. At no time in that period have levels exceeded either the 1-hour or annual standard. Rather, levels have consistently remained well below the ambient air concentrations specified by the standard of 53 ppb. Furthermore, ambient NO_2 levels have been in decline since the 2011–2012 design value assessment period, and NO_2 concentrations since 2006 have remained well below the Federal standard in effect. NO_2 data from any years post-2016 were not yet available when the EHD proposed regulations were finalized.

We disagree that there have been at least two years of particulate matter (PM_{10}) violations within the past 10 years. The PM_{10} standard is not expressed as a simple concentration. Instead, EPA set a 24-hour concentration of 150 micrograms per cubic meter (mg/m^3) and then established that the standard would be attained if the number of days per calendar year with a 24-hour average concentration above 150 mg/m^3 is equal to or less than one when averaged over three calendar years. The two readings greater than 150 mg/m^3, when averaged over three calendar years each, are below the standard of 150 mg/m^3. As shown in Table 4, PM_{10} levels in the County area (as measured by the second highest 24-hour average per year) have fluctuated between 102 mg/m^3 and 153 mg/m^3 over the last decade. Also, the overall trend over the last decade is relatively stable and has been below the standard of 150 mg/m^3 on average. Albuquerque and Bernalillo County have remained in attainment for the PM_{10} standard for the entire period from 2006 to 2016 and have never been designated as nonattainment prior to that period, despite the dusty desert environment in which the city and county are situated. See Attachment C, 4. Pleadings filed with Air Board.

We disagree that the most recent (2016) design value for the sulfur dioxide (SO_2) level shows a secondary violation. Table 6 in our proposed approval shows SO_2 design values and how they compare to the 1-hour primary NAAQS standard, not the 3-hour secondary standard. The maximum permissible concentration under the 1-hour primary standard is 75 parts per billion (*ppb*). The maximum permissible concentration under the 3-hour secondary NAAQS standard is 0.5 parts per million (*ppm*). As the design value is only 6 ppb for the 1-hour NAAQS for 2016 and the previous 3 years are only 5 ppb each, the SO_2 design values are well below any violation of the primary standard of 75 ppb or the secondary standard of .5 ppm. Note that on Table 6 in our proposal, the design value for each year is actually measured in ppb, not in mg/m^3 as shown.

Comment: Some commenters stated that there is a failure to assess the effect of the recently changed zoning and land use ordinances of the City of Albuquerque on where, and how many, gasoline stations may be located near and within residential areas.

Response: Neither the CAA nor the corresponding Federal regulations specifically require that EPA assess the effect of local zoning and land use ordinances when determining whether to approve a minor NSR SIP revision. Rather, EPA is required to ensure that the revision complies with the applicable requirements found in CAA 110(a)(2)(C), CAA 110(l), 40 CFR part 51, subpart I, 40 CFR part 51, subpart F, and appendix V to 40 CFR part 51. We have explained in the responses above, and in our proposed rulemaking, how the SIP revision meets the requirements of CAA 110(a)(2)(C), CAA 110(l), 40 CFR part 51, subpart I, 40 CFR part 51, subpart F, and appendix V to 40 CFR part 51. Appendix V to 40 CFR part 51 requires that states who submit SIP revisions to EPA for approval provide evidence that they have the necessary legal authority under state law to adopt and implement the plan. EHD provided evidence of this authority. See Attachment C, 4. Pleadings filed with Air Board.

III. Final Action

We are approving the revisions to the City of Albuquerque-Bernalillo County Minor NSR program dated January 18, 2018 that includes supplemental information provided on April 29, 2019 as proposed. The revisions were adopted and submitted in accordance with the requirements of the CAA and

the EPA's regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque-Bernalillo County Minor NSR program are consistent with CAA section 110(l), the EPA's regulations at 40 CFR 51.160—51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted on November 8, 2017, and submitted to the EPA on January 18, 2018:

- Addition of 20.11.39 NMAC PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES
- 20.11.39.1 NMAC Issuing Agency
- 20.11.39.2 NMAC Scope
- 20.11.39.3 NMAC Statutory Authority
- 20.11.39.4 NMAC Duration
- 20.11.39.5 NMAC Effective Date
- 20.11.39.6 NMAC Objective
- 20.11.39.7 NMAC Definitions
- 20.11.39.8 NMAC Variances
- 20.11.39.9 NMAC Savings Clause
- 20.11.39.10 NMAC Severability
- 20.11.39.11 NMAC Documents
- 20.11.39.12 NMAC Permit Waivers
- 20.11.39.13 NMAC Requirements for Source Categories to Which Part 39 Applies
- 20.11.39.14 NMAC Air Quality Notification Application
- 20.11.39.15 NMAC AQN Application Review
- 20.11.39.16 NMAC Transfer of Prior Authorizations to AQNs
- 20.11.39.17 NMAC Compliance and Enforcement
- 20.11.39.18 NMAC Amending and Air Quality Notification
- 20.11.39.19 NMAC Fees
- 20.11.39.20 NMAC AQN Cancellation
- 20.11.41 NMAC CONSTRUCTION PERMITS
- 20.11.41.2(E)(2) NMAC Additional Permit Requirements
- 20.11.41.2(G) NMAC Permissive Waiver

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the revisions to the New Mexico, Albuquerque/Bernalillo County regulations, as described in the Final Action section above, are requirements incorporated by reference. We have made, and will continue to make, these materials generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact Rick Barrett for more information).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 23, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620(c), the second table titled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' is amended by adding an entry in alphanumerical order for ''Part 39 (20.11.39 NMAC)'' and revising the entry for ''Part 41 (20.11.41 NMAC)'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* *	*	*	*	* *
Part 39 (20.11.39 NMAC)	Permit Waivers and Air Quality Notifications for Certain Sources.	1/18/2018	1/16/2020, [Insert **Federal Register** citation].	
* *	*	*	*	* *
Part 41 (20.11.41 NMAC)	Construction Permits	1/18/2018	1/16/2020, [Insert **Federal Register** citation].	
* *	*	*	*	* *

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[FR Doc. 2020–00286 Filed 1–15–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0560; FRL–10002–21]

Fenhexamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenhexamid in or on multiple commodities identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 16, 2020. Objections and requests for hearings must be received on or before March 16, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0560, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0560 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before March 16, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b). In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–

2018–0560, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 18, 2018 (83 FR 52787) (FRL–9984–21), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8689) by Interregional Research Project Number 4 (IR–4) Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.553 be amended by establishing tolerances for residues of the fungicide fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methylcyclohexanecarboxamide), in or on arugula at 30.0 parts per million (ppm); berry, low growing, subgroup 13–07G at 3.0 ppm; bushberry subgroup 13–07B at 5.0 ppm; caneberry subgroup 13–07A at 20.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 4.0 ppm; fruit, stone, group 12–12, except plum, prune, fresh, postharvest at 10.0 ppm; garden cress at 30.0 ppm; kiwifruit, fuzzy at 30.0 ppm; leafy greens, subgroup 4–16A, except spinach at 30.0 ppm; onion, bulb, crop subgroup 3–07A at 2.0 ppm; onion, green, subgroup 3–07B at 30.0 ppm; upland cress at 30.0 ppm; vegetable, fruiting, group 8–10, except non-bell pepper at 2.0 ppm. Also, the petition requested to remove existing tolerances in 40 CFR 180.553 for residues of the fungicide fenhexamid in or on the raw agricultural commodities: Bushberry subgroup 13B at 5.0 ppm; caneberry subgroup 13A at 20.0 ppm; cilantro, leaves at 30.0 ppm; fruit, stone, group 12, except plum, prune, fresh, postharvest at 10.0 ppm; grape at 4.0 ppm; juneberry at 5.0 ppm; kiwifruit, postharvest at 15.0 ppm; leafy greens subgroup 4A, except spinach at 30.0 ppm; lingonberry at 5.0 ppm; salal at 5.0 ppm; strawberry at 3.0 ppm; and vegetable, fruiting, group 8, except nonbell pepper at 2.0 ppm. That document referenced a summary of the petition prepared by Arysta LifeSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances at levels that vary from what the petitioner requested, in accordance with its authority under section 408(d)(4)(A)(i) of the FFDCA. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Following repeated oral dosing, the most toxicologically relevant effects were hematological changes (decreased red blood cell (RBC) counts, hemoglobin, and hematocrit and increased Heinz bodies) in dogs, and decreased body weights, increased food consumption, and decreased liver and/or kidney weights in rats and mice. There is no evidence of immunotoxicity or neurotoxicity in the fenhexamid database. There is no evidence of qualitative or quantitative susceptibility in the developmental studies in rats and rabbits. In the reproductive study, decreased body weights in F1 and F2 pups were observed in the presence of maternal toxicity. However, there is no concern for increased susceptibility of offspring because a clear no-observed-adverse-effect-level (NOAEL) and a well-characterized dose response for offspring effects was observed in the presence of maternal toxicity. There were no adverse effects observed in a dermal toxicity study up to the highest dose tested (1,000 mg/kg/day). Although no subchronic inhalation study is available for fenhexamid, a 5-day range finding inhalation study reported lung-specific effects (macroscopic grey coloration of the lungs and marginal increases in lung weights) at the highest dose tested. However, concern for these effects is low because they occurred at a dose more than 7X higher than the selected inhalation points of departure (POD). In an acute neurotoxicity study in rats, the only effect observed was a marginally decreased mean body temperature in male rats following a single high dose of 2,000 mg/kg. This effect is not considered to be biologically significant.

Based on the lack of evidence of carcinogenicity in rats and mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies, EPA has classified fenhexamid as ''not likely'' to be a human carcinogen. Specific information on the studies received and the nature of the adverse effects caused by fenhexamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document titled Fenhexamid: ''Human Health Risk Assessment for Section 3 Registration for New Uses in/on Onion Bulb Subgroup 3–07A; Onion Green Subgroup 3–07B; Fuzzy Kiwifruit; Crop Group Conversions/Expansions for Fruit

Small Vine Climbing, except Fuzzy Kiwifruit Subgroup 13–07F; Berry Low Growing Subgroup 13–07G; Caneberry Subgroup 13–07A; Bushberry Subgroup 13–07B; Fruit Stone Group 12–12, except Plum, Prune Fresh; Leafy Greens Subgroup 4–16A except Spinach; Vegetable Fruiting Group 8–10 except Non bell Pepper; and to Establish Individual Tolerances on Arugula; Garden cress; Upland Cress'' at page 27 in docket ID number EPA–HQ–OPP–2018–0560.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for fenhexamid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENHEXAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	Not selected. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies.		
Chronic dietary (All populations)	NOAEL = 17 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.17 mg/kg/day. cPAD = 0.17 mg/kg/day	1-year feeding study (dog). LOAEL = 124 mg/kg/day based on decreased RBC counts, hemoglobin, and hematocrit and increased Heinz bodies in males and females; increased adrenal weights and intracytoplasmic vacuoles in adrenal cortex in females.
Cancer (Oral)	Classification: ''Not likely to be Carcinogenic to Humans'' based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenhexamid, EPA considered exposure under the petitioned-for tolerances as well as all existing fenhexamid tolerances in 40 CFR 180.553. EPA assessed dietary exposures from fenhexamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fenhexamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined chronic dietary exposure assessment using tolerance-level residues, 100 percent crop treated (100 PCT), and HED's 2018 default processing factors.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fenhexamid. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

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

Based on the Pesticides in Water Calculator (PWC version 1.52; Feb. 2016) model, the estimated drinking water concentrations (EDWCs) of fenhexamid for chronic exposures for non-cancer assessments, EDWCs of fenhexamid are estimated to be 144 ppb for surface water and 1986 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 1986 ppb was used to assess the contribution to drinking water.

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

flea and tick control on pets). Fenhexamid is not registered for any specific use patterns that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common method of toxicity, EPA has not made a common mechanism of toxicity finding as to fenhexamid and any other substances and fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of qualitative or quantitative susceptibility in the developmental studies in rats and rabbits. In the reproductive study, decreased body weights in F1 and F2 pups were observed in the presence of maternal toxicity. However, there is no concern for increased susceptibility of offspring because a clear no-observed-adverse-effect-level (NOAEL) and a well-characterized dose response for offspring effects was observed in the presence of maternal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenhexamid is complete.

ii. There is no indication that fenhexamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fenhexamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies and no concern for any increased susceptibility in the young from the 2-generation reproduction study due to the clear dose-response and NOAEL of that study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fenhexamid in drinking water. These assessments will not underestimate the exposure and risks posed by fenhexamid.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fenhexamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenhexamid from food and water will utilize 79% of the cPAD for all infants (<1 year old), the population subgroup receiving the greatest exposure. There are no residential uses for fenhexamid. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fenhexamid is not expected.

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

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

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

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

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology Bayer AG Method 00362, a high-performance liquid chromatography (HPLC) method with electrochemical detection (ECD) is available to enforce the tolerance expression.

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

B. International Residue Limits

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

Codex MRLs for head and leaf lettuce; eggplant, tomato, and bell pepper; and apricot, nectarine, and peach are harmonized with the U.S. tolerances for fenhexamid on leafy greens subgroup 4–16A, except spinach; vegetable, fruiting, group 8–10, except non bell pepper; and fruit, stone, group 12–12, except plum, prune, dried, respectively. The Codex MRLs for other stone fruits in crop group 12–12 are lower than the crop group tolerance; harmonizing with them could result in over-tolerance residues in the U.S. despite legal use of the pesticide according to the label.

The established U.S. tolerances for fenhexamid in or on caneberry subgroup 13–07A and kiwifruit, fuzzy are 20 ppm and 30 ppm respectively. These values are higher than the Codex MRL values of 15 ppm for individual commodities in caneberry subgroup 13–07A and kiwifruit, fuzzy. The U.S. tolerance values for fenhexamid on caneberry subgroup 13–07A and kiwifruit, fuzzy were determined based on expected residues resulting from U.S. use pattern; harmonizing with Codex MRL values may result in over tolerance residues. The established U.S. tolerances for residues of fenhexamid in grape and strawberry are currently harmonized with Canada but are lower than the established Codex MRLs. These U.S. tolerances were established as part of a joint review with the Health Canada Pest Management Regulatory Agency (PMRA); therefore, EPA is not raising these tolerances to harmonize with Codex.

C. Revisions to Petitioned-For Tolerances

EPA has revised the proposed tolerances for residues of fenhexamid on onion bulb subgroup 3–07A; onion green subgroup 3–07B; fuzzy kiwifruit; fruit small vine climbing, except fuzzy kiwifruit subgroup 13–07F; berry low growing subgroup 13–07G; caneberry subgroup 13–07A; bushberry subgroup 13–07B; fruit stone group 12–12, except plum prune fresh; leafy greens subgroup 4–16A except spinach; vegetable fruiting group 8–10 except nonbell pepper; arugula; garden cress and upland cress based on current OECD rounding classes. In addition, EPA corrected the commodity definition for fruit, stone, group 12–12, except plum, prune, fresh and plum, prune, dried.

V. Conclusion

Therefore, tolerances are established for residues of fenhexamid, in or on arugula at 30 ppm; berry, low growing, subgroup 13–07G at 3 ppm; bushberry subgroup 13–07B at 5 ppm; caneberry subgroup 13–07A at 20 ppm; cress, garden at 30 ppm; cress, upland at 30 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 4 ppm; fruit, stone, group 12–12, except plum, prune at 10 ppm; kiwifruit, fuzzy at 30 ppm; leafy greens, subgroup 4–16A, except spinach at 30 ppm; onion, bulb, subgroup 3–07A at 2 ppm; onion, green, subgroup 3–07B at 30 ppm; and vegetable, fruiting, group 8–10, except nonbell pepper at 2 ppm.

Additionally, the existing tolerances on the following commodities are removed as unnecessary due to the establishment of the above tolerances: bushberry subgroup 13B; caneberry subgroup 13A; cilantro, leaves; fruit, stone, group 12, except plum, prune, fresh, postharvest; grape; juneberry; kiwifruit, postharvest; leafy greens subgroup 4A, except spinach; lingonberry; salal; strawberry; and vegetable, fruiting, group 8, except nonbell pepper. Finally, EPA is revising the tolerance expression to be consistent with Agency policy.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply

to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.553, amend paragraph (a) as follows:

■ a. Revise the introductory text;

■ b. Add alphabetically the entries for ''Arugula'' and ''Berry, low growing, subgroup 13–07G'';

■ c. Remove the entry for ''Bushberry subgroup 13B'';

■ d. Add alphabetically the entry for ''Bushberry subgroup 13–07B'';

■ e. Remove the entry for ''Caneberry subgroup 13A'';

■ f. Add alphabetically the entry for ''Caneberry subgroup 13–07A'';

■ g. Remove the entry for ''Cilantro, leaves'';

■ h. Add alphabetically the entries for ''Cress, garden''; ''Cress, upland''; ''Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F''; and ''Fruit, stone, group 12–12, except plum, prune'';

■ i. Remove the entries for ''Fruit, stone, group 12, except plum, prune, fresh, postharvest''; ''Grape''; and ''Juneberry'';

■ j. Add alphabetically the entry for ''Kiwifruit, fuzzy'';

■ k. Remove the entries for ''Kiwifruit, postharvest'' and ''Leafy greens subgroup 4A, except spinach'';

■ l. Add alphabetically the entry for ''Leafy greens, subgroup 4–16A, except spinach'';

■ m. Remove the entry for ''Lingonberry'';

■ n. Add alphabetically the entries for ''Onion, bulb, subgroup 3–07A'' and ''Onion, green, subgroup 3–07B'';

■ o. Remove the entries for ''Salal''; ''Strawberry''; and ''Vegetable, fruiting, group 8, except nonbell pepper''; and

■ p. Add alphabetically the entry for ''Vegetable, fruiting, group 8–10, except non bell pepper''.

The revisions and additions read as follows:

§ 180.553 Fenhexamid; tolerances for residues.

(a) *General.* Tolerances are established for residues of fenhexamid, including its metabolites and degradate, in or on the commodities in the table in this paragraph (a). Compliance with the tolerance levels specified in this paragraph (a) is to be determined by measuring only fenhexamid (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methylcyclohexanecarboxamide).

Commodity	Parts per million
* * * * * * *	
Arugula	30
* * * * * * *	
Berry, low growing, subgroup 13–07G	3
Bushberry subgroup 13–07B	5
Caneberry subgroup 13–07A	20
Cress, garden	30
Cress, upland	30
* * * * * * *	
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	4
Fruit, stone, group 12–12, except plum, prune	10
* * * * * * *	
Kiwifruit, fuzzy	30
Leafy greens, subgroup 4–16A, except spinach	30
Onion, bulb, subgroup 3–07A	2
Onion, green, subgroup 3–07B	30
* * * * * * *	
Vegetable, fruiting, group 8–10, except nonbell pepper	2

* * * * *

[FR Doc. 2020–00080 Filed 1–15–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; FCC 19–124; FRS 16358]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) adopts a z-axis (vertical) location accuracy metric of plus or minus 3 meters for 80 percent of indoor wireless E911 calls for z-axis capable handsets. The Commission also requires nationwide commercial mobile radio service (CMRS) providers to deploy dispatchable location or z-axis technology that meets this metric in the top 25 markets by April 3, 2021 and in the top 50 markets by April 3, 2023. The Commission also extends privacy protections to z-axis data conveyed with 911 calls.

DATES:

Effective date: March 16, 2020.

Compliance date: Compliance will not be required for § 9.10(i)(2)(ii)(C) and (D), (i)(4)(v), and (j)(4) until the Commission publishes a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: Nellie Foosaner, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2925 or via email at *Nellie.Foosaner@fcc.gov;* Alex Espinoza, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0849 or via email at *Alex.Espinoza@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order, FCC 19–124, adopted on November 22, 2019 and released on November 25, 2019. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the order also is available on the Commission's website at *http://www.fcc.gov.*

Synopsis

I. Introduction

1. All Americans using mobile phones—whether they are calling from urban or rural areas, buildings or outdoor venues—should have the capability to dial 911 and receive the support they need in times of an emergency. Consumers make 240 million calls to 911 each year, and in many areas 80% or more of these calls are from wireless phones. While advances in technology have improved the overall ability of first responders to locate 911 callers, challenges remain particularly for locating 911 callers in multi-story buildings.

2. To ensure that first responders and Public Safety Answering Points (PSAPs) can find 911 callers quickly and accurately when a consumer calls from a multi-story building, we adopt a vertical, or z-axis, location accuracy metric of plus or minus 3 meters relative to the handset for each of the benchmarks and geographic requirements previously established in the Commission's E911 wireless location accuracy rules. This action will more accurately identify the floor level for most 911 calls, reduce emergency response times, and save lives.

II. Background

3. The Commission has been working with the public safety community and industry partners to ensure the accurate delivery of 911 vertical location information for the better part of a decade. In 2011, the Commission tasked the Communications Security, Reliability, and Interoperability Council (CSRIC) with testing indoor location accuracy technologies, including barometric pressure sensors, in a test bed. CSRIC conducted tests on a variety of technologies in 2012, and the results showed that at least one vendor—NextNav LLC (NextNav)—could locate a caller's vertical location within 3 meters more than 67% of the time in dense urban, urban, and rural morphologies. In 2013, NextNav conducted additional testing on the second generation of its location technology and reported that it provided callers' vertical location within 3.2 meters 80% of the time, across all morphologies. Accordingly, in 2014, the Commission proposed measures and timeframes to improve location accuracy for wireless E911 calls originating indoors, including, among others, a 3-meter z-axis metric for 80% of such calls.

4. In 2015, the Commission adopted rules for improving E911 wireless location accuracy. Under these rules, CMRS providers must meet a series of accuracy benchmarks by either conveying dispatchable location (*e.g.,* street address, floor level, and office or apartment number) or coordinate-based location information to the appropriate PSAP. For vertical location, the Commission required wireless providers to provide either dispatchable location using the National Emergency Address Database (NEAD) or vertical (z-axis) location information in compliance with the FCC-approved metric. If dispatchable location is used, there must be a density of NEAD reference points distributed throughout the cellular market area (CMA) equivalent to 25% of the population in that CMA. If z-axis location technology is used, it must be deployed to cover 80% of the CMA population. Nationwide CMRS providers must meet these benchmarks in each of the top 25 CMAs by April 3, 2021 and in each of the top 50 CMAs by April 3, 2023. Non-nationwide CMRS providers that serve any of the top 25 or 50 Cellular Market Areas have an additional year to meet these benchmarks. In addition, the Commission required the nationwide CMRS providers to test and develop a proposed z-axis accuracy metric and submit the proposed metric to the Commission for approval by August 3, 2018.

5. On August 3, 2018, CTIA submitted the ''Stage Z Test Report'' (Report or Stage Z Test Report) on behalf of the four nationwide CMRS providers. According to the Report, Stage Z testing sought to assess the accuracy of solutions that use barometric pressure sensors in the handset for determining altitude in support of E911. Two vendors, NextNav and Polaris Wireless, Inc. (Polaris), participated in Stage Z. The test results showed that in 80% of NextNav test calls, vertical location was identified to a range of 1.8 meters or less, while 80% of Polaris test calls yielded a vertical accuracy range of 4.8 meters or less. The Report noted that Polaris' performance ''could likely be significantly improved should a more robust handset barometric sensor calibration approach [than that used in the test bed] be applied.''

6. In its August 3, 2018, cover letter submitting the Report, CTIA stated that the test results provided ''helpful insight'' into the state of z-axis technologies, but that ''significant questions remain about performance

and scalability in live wireless 9–1–1 calling environments.'' On behalf of the four nationwide wireless providers, CTIA therefore proposed a z-axis metric of ''5 meters for 80% of fixes from mobile devices capable of delivering barometric pressure sensor-based altitude estimates.'' CTIA also stated that further testing of vertical location technologies could yield results to validate adoption of a more accurate z-axis metric. On September 10, 2018, the Public Safety and Homeland Security Bureau (Bureau) released a Public Notice seeking comment on the Report and the carriers' proposed z-axis metric.

7. In March 2019, the Commission released the Fourth Further Notice of Proposed Rulemaking (Fourth Further NPRM) in this proceeding (84 FR 13211 (April 4, 2019)). There, we proposed a z-axis metric of 3 meters relative to the handset for 80% of indoor wireless E911 calls for each of the benchmarks and geographic requirements previously established in the Commission's E911 wireless location accuracy rules. Based on existing test data from the two vendors that participated in the industry test bed, we tentatively concluded that achieving this standard was technically feasible. We also tentatively concluded that unlike the 5-meter standard originally proposed by the wireless carriers, a 3-meter standard would provide sufficient accuracy to identify the caller's floor level in most cases. We sought comment on adopting a stricter 2-meter metric but tentatively concluded that it was not yet technically achievable on a consistent basis, although it could become achievable in the longer term as technology continues to evolve.

8. In response to the Fourth Further NPRM, the Commission received 20 comments and 11 reply comments, filed by public safety entities, vendors, wireless carriers, technology companies, and industry associations.

III. Fifth Report and Order

9. We adopt a 3-meter z-axis 911 location accuracy metric to be implemented by the April 2021 and 2023 vertical accuracy deadlines as proposed in the Fourth Further NPRM. Numerous commenters, including public safety entities, vendors, and carriers, agree that implementing the proposed 3-meter metric within existing timelines will benefit public safety and is technically feasible. Although some industry commenters contend that we should take a phased approach or delay adopting a metric pending further testing, and some public safety commenters advocate adopting stricter accuracy standards for the 2021 and 2023 deadlines, we find these arguments unpersuasive.

A. The 3-Meter Metric

10. We agree with commenters who conclude that a 3-meter metric will bring real public safety benefits to the American public and is technically feasible in the near term. A broad cross-section of public safety commenters agree that, in the near term, a 3-meter metric will meet public safety needs and will provide actionable information to first responders. Public safety organizations in support of the 3-meter metric include the International Association of Fire Chiefs (IAFC), the International Association of Chiefs of Police (IACP), the National Association of State EMS Officials (NASEMSO), the National Sheriffs' Association (IAFC et al.); International Association of Fire Fighters (IAFF); NENA: The 9–1–1 Association (NENA); State of Florida Department of Management Services, Division of Telecommunications, Bureau of Public Safety (Florida); and Texas 9–1–1 Alliance, the Texas Commission on State Emergency Communications (CSEC), and the Municipal Emergency Communication Districts Association (Texas 911 Entities). The Boulder Emergency Telephone Service Authority (BRETSA) notes that ''floor-level accuracy is a critical objective, and 3-meter accuracy is floor level accuracy.'' The International Association of Fire Fighters states that the Commission was ''correct in concluding that a 3 meters vertical accuracy requirement 'will significantly narrow the scope of the search and can provide a reasonable basis for identifying the correct floor in most cases.' '' For example, in-building tests that International Association of Fire Fighters conducted in July 2014 using NextNav technology showed significant improvement in search time compared to searching without any vertical location information component. The International Association of Fire Fighters asserts that ''vertical altitude information can provide a substantial improvement in search effectiveness in multistory structures, even without a precise floor number or a dispatchable address.'' Texas 911 Entities supports immediate adoption of a 3-meter metric on the grounds that ''the 'perfect' should not be the enemy of the 'good.' '' The International Association of Fire Chiefs similarly supports adopting a 3 meter metric and then narrowing the metric ''over a timeframe as technology develops.''

11. What is more, we find that implementing the 3-meter metric on schedule is technically feasible. Two vendors have consistently shown in testing that they can meet or surpass this standard. Since 2012, NextNav has repeatedly achieved 3-meter accuracy in multiple independently-conducted tests. In the Stage Z test bed, NextNav's technology was accurate within 1.8 meters or better for 80% of indoor fixes and 3 meters or better for 94% of indoor fixes. In other words, NextNav's technology is capable of ''consistent performance within an accuracy metric of 3 meters or less.''

12. Polaris too can achieve accuracy within 2.8 meters for 80% of test calls by using additional available location data to recalibrate and refine its Stage Z data. Although Polaris did not employ active calibration of the barometric sensors during Stage Z testing, the Stage Z Report acknowledges that the test results for Polaris ''may underestimate the performance results that might be achieved'' if a calibration approach had been employed. We agree with Polaris that its technology can deliver 3-meter accuracy, and with NextNav that ''the Stage Z test process confirmed, once again, that existing location technologies available from multiple vendors can reliably achieve floor level vertical accuracy within +/− 3 meters for at least 80 percent of indoor wireless calls to E911 emergency services.''

13. The record suggests that other technological options for vertical location accuracy are emerging, and that, as T-Mobile describes, the market is driving innovation in location accuracy technology for E911. Airwave Developers LLC (AWD) submits that Citizens Broadband Radio Service (CBRS) technology low cost antennas installed on each floor of a building will generate data allowing for the PSAP to pinpoint the floor from which the wireless call was made. In 2018, CTIA announced nationwide wireless providers AT&T, Sprint, T-Mobile and Verizon were adding new location-based tools with existing wireless 9–1–1 location technologies by the end of that year. Two device based approaches are Apple's delivery of Hybridized Emergency Location (HELO) data and Google's Android Emergency Location Service (ELS). Apple has announced that it will use new technology to quickly and securely share Hybridized Emergency Location information with 911 call centers. The HELO ''solution has offered z- axis estimates and uncertainties beginning in 2013, and those estimates have been consumed by carriers since its first adoption in 2015.'' Apple has committed to improving its vertical, as well as horizontal, location accuracy and will participate in CTIA's

z-axis testing by the end of 2020. Google in turn has described its Emergency Location Service solution, which can record and report z-axis information, as a feature fully integrated in the operating system on 99% of Android handsets that makes handset location known when the user initiates an emergency call or text. Google plans to test the vertical accuracy capabilities of its Emergency Location Service solution in Stage Za. In short, companies are actively exploring new types of cellular air interfaces for location accuracy ''including 5G interfaces, additional satellite constellations, and other wireless infrastructure, such as Wi-Fi access points, Bluetooth beacons and small cells, as well as information provided by sensors within today's smartphones.''

14. We further conclude that adopting the 3-meter metric will keep deployment of z-axis information to public safety officials on schedule. Public safety commenters support the current 2021 and 2023 deadlines for applying the z-axis metric and oppose delay for further testing. The International Association of Fire Fighters finds it ''inconceivable . . . that either the Commission or the public safety community would allow themselves to get this close to achieving a historic benefit in the capabilities of emergency services and so much as hesitate in taking the next step.'' BRETSA maintains that ''[a]doption of a vertical location standard will benefit the public'' and ''additional testing should not delay provision of the public benefit.'' Vendors also support adoption of a z-axis metric without further delay. NextNav states ''[n]ot only would further delay pose a continued risk to public safety, but it is also unclear whether it would appreciably improve the information that is currently available to the Commission.'' AWD notes that current technology is able to meet the 3-meter metric.

15. We disagree with commenters that raise a number of objections. To start, we disagree with commenters like Google, who argue for a ''phased'' approach that would involve setting a 4-meter metric initially and tightening the metric to 3 meters by 2023. Google argues that ''[w]hile major progress has been made, consensus has not been reached on the appropriate z-axis metric, and the full capabilities of alternative technologies cannot yet be determined,'' so that a phased approach would ''better reflect[ ] the current abilities and future promise of vertical location technologies.'' We believe sufficient testing that has already occurred and that the technology trends that Google itself cites validate our conclusion that 3 meters is already technically feasible and provides the appropriate metric for the development of alternative new technologies.

16. Similarly, we disagree with commenters who ask us to delay action for further testing. To start, we note that these arguments ring hollow when several CMRS providers—those who bear direct responsibility for complying with the 3-meter metric on schedule—are on record as supporting adoption of the 3-meter metric without further testing. For example, AT&T favors the Commission's proposal because ''it will give the industry certainty and advance the development process necessary to meet the 2021 and 2023 vertical location accuracy benchmarks in the Fourth Report & Order [80 FR 11806 (March 4, 2015)].'' CTIA reiterates that it supports the proposed z-axis metric without changes, having previously stated that ''[t]he Fourth Further [NPRM] offers a reasoned approach to the definition of floor level accuracy as part of the proposed z-axis metric: within 3 meters above or below the vertical location provided by the phone.'' And Verizon supports the Commission's proposed metric, stating that it is ''a good target for 9–1–1 calls from devices with the necessary capability.'' Google also supports a 3 meter metric and asks that our approach remain technology neutral so that CMRS providers may select the technology to meet their location accuracy obligations.

17. More specifically, we disagree with Google and Qualcomm that there has been insufficient testing of barometric sensor-based technologies in extreme cold-weather conditions. Although CTIA and Qualcomm note that NextNav was unable to participate in Stage Z winter testing in Chicago, we do not consider this to be sufficient reason to delay our decision. Polaris did participate in Stage Z winter testing in Chicago and achieved results that were comparable to the results it achieved in the other test bed locations in more moderate weather conditions. Moreover, as BRETSA states, ''[e]ven if vertical location results would be less accurate during episodes of climactic extremes; that cannot justify delaying adoption of a standard and deployment of vertical location technologies which have been proven in common weather conditions.'' Finally, despite its own complaints about a lack of cold weather data, CTIA waited to conduct Stage Za testing to conclude in late 2019, so it will be unable to provide winter test data for at least another year. We cannot accept such a long delay in adopting a metric, given that two vendors can meet the metric and there are emerging device-based solutions.

18. We disagree with Google that additional testing is needed in rural morphologies. The rural morphology is ''the sparsest environment overall'' and is mostly residential, with most structures between 1 and 2 stories high. As Verizon notes, urban areas are important for vertical location accuracy because ''[i]t is in these areas where multi-story buildings are concentrated, so service providers should focus their deployments on urban and dense urban areas within the covered CMAs.'' In these morphologies, the test bed shows that NextNav's solution would meet a 3-meter metric. Additionally, NextNav's technology was tested for vertical accuracy in rural areas during the original CSRIC Test Bed conducted in 2012, and NextNav's results from that testing fell within 3 meters for 80% of all calls. In the Addendum to the Stage Z Report, Polaris explains that its results in all morphologies would fall below 3 meters had it used limited active calibration during the Stage Z test. The Stage Z Test Report acknowledges that Polaris did not employ continuous calibration during the test and that Polaris' results ''may underestimate the performance results that might be achieved using an effective continuous (background) calibration algorithm for each individual mobile device.''

19. We also disagree with Apple's suggestion that we should delay action based on concerns that the test bed did not adequately test z-axis solutions under real-world conditions. Apple states that results were obtained in the test bed ''only under conditions that deviate significantly from realistic user patterns and constraints'' and ''do not necessarily mean that a ±3 meter accuracy metric is achievable by April 2021 in real-world circumstances.'' In fact, the testing was conducted in multiple regions, morphologies, and building configurations in order to assess how z-axis technology would perform in a variety of real-world environments. Test bed procedures were based on the recommendations of the Commission's fourth Communications, Security, Reliability & Interoperability Council (CSRIC IV), and testing followed guidelines developed by the Alliance for Telecommunications Industry Solutions' (ATIS) Emergency Services Interconnection Forum (ESIF), including ESIF's Emergency Services and Methodologies (ESM) subcommittee. As the Stage Z Test Report states, ''ATIS provided guidelines on test building and test point selection and oversaw implementation of the Test Bed by the

Administrator-Executor. In addition, Test Bed, LLC receives guidance from the TAC, which includes representatives of the nationwide wireless service providers, as well as the Association of Public-Safety Communications Officials International (APCO) and the National Emergency Number Association (NENA).'' Although it is not possible for any test bed to replicate every conceivable real world scenario, we find the test bed results to be sufficiently representative and robust to support our establishment of the 3-meter metric. We also agree with NextNav that ''not only would further delay pose a continued risk to public safety, but it is also unclear whether it would appreciably improve information that is currently available to the Commission.''

20. We also disagree with T-Mobile that further testing is first needed with a wider variety of handsets, including older handsets. NextNav and Polaris each tested six handsets, for a total of twelve handsets, in Stage Z. These handsets were selected by the test bed administrator, not the vendors, and the Report states that they were selected ''to ensure variety between sensor manufacturers, the age of handsets (within limits) and their overall use characteristics.'' The handsets used in testing were ''the same production-ready handsets sold by wireless carriers and available to the general public'' and did not contain any hardware modification that would favor these handsets over any commercially available handsets. Thus, we adopt our tentative conclusion from the Fourth Further NPRM that a sufficient variety of devices have been tested to support moving forward with our proposed 3-meter metric at this time.

21. We also decline to adopt a 2-meter metric, as suggested by BRETSA, at this time. The record confirms that a 2-meter metric is not technically feasible under the existing timelines, although it may become achievable in the long term as technology continues to evolve.

22. Finally, we need not address APCO's suggestion in its comments that the Commission proceed without adopting a metric. In a recent ex parte filing, APCO stated that based on the record and its discussions with stakeholders, it ''does not recommend that the Commission decline to adopt a z-axis metric altogether.'' APCO's revised position aligns with the views of all other public safety commenters that adopting a z-axis metric remains an essential measure to ensure that first responders receive important location information when providing dispatchable location is not feasible. We agree.

B. Deployment

23. In the Fourth Further NPRM, we proposed that the 3-meter z-axis metric apply to 80% of calls from all handsets, *i.e.,* that to comply with the metric, z-axis technologies would have to be demonstrated in the test bed to provide 3-meter accuracy for 80% of wireless calls. We asked whether applying the metric to 80% of wireless calls was appropriate, and if not, what percentage of calls would be appropriate. We also noted that CTIA had proposed that its 5-meter metric apply only to ''mobile devices capable of delivering barometric pressure sensor-based altitude estimates.'' We asked whether the z-axis metric should only be applied to devices with barometric pressure sensors, or to devices manufactured after a date certain, or whether it should apply to all handsets, as we proposed. We observed that to the extent that CMRS providers elect to use solutions that rely on barometric pressure readings, nearly all smartphones on the market appear to be equipped with barometric pressure sensors. We observed that barometric sensor-based solutions are likely to be scalable and can be made readily available to wireless consumers within the timeframes required by the rules. We sought comment on this assessment and its underlying factual assumptions. We also sought comment on the potential for development and deployment of other new or emerging vertical location solutions that could be used to meet the proposed z-axis metric.

24. As proposed, we apply the 3-meter accuracy metric to 80% of wireless E911 calls. This is consistent with our approach to E911 horizontal accuracy, which requires wireless carriers to meet horizontal accuracy requirements for 80% of calls by April 2021. Thus, as the basis for validation of any z-axis technology, we require wireless carriers to demonstrate in the test bed that the technology achieves 3-meter accuracy for 80% of wireless E911 calls.

25. We also conclude that application of the 3-meter metric should apply to all handsets that have the capability to support vertical location, regardless of technology, not just new handsets or barometric pressure sensor capable handsets. We thus clarify that a device will be considered ''z-axis capable'' so long as it can measure and report vertical location without a hardware upgrade. Thus, devices that can be modified to support vertical location by means of a firmware or software upgrade will be considered z-axis capable. This definition makes clear that any device technically capable of measuring and reporting vertical location information without a change in hardware must be enabled to do so—and actions by carriers, device manufacturers, operating system providers, chipmakers, or z-axis vendors that would prohibit technically capable devices from actually and effectively measuring and reporting z-axis information put the public and emergency personnel at unacceptable risk. We expect to closely monitor the roll-out of z-axis capable devices to the American public over the next two years and take all appropriate action against any company that obstructs the effective deployment of such technologies in a timely manner.

26. The record reflects that z-axis capable devices are widely available. NENA concludes that ''it is safe to assume that a comparatively small portion of modern phones lack [barometric pressure] sensors.'' NENA also states that market trends suggest an increase in barometric pressure sensor prevalence ''as applications such as fitness apps and small electronic devices like standalone GPS and fitness trackers increasingly incorporate altitude measurements, driving incentives to include [barometric pressure] sensor hardware.'' As Google points out, the Fourth Report & Order ''established benchmarks and timetables clear enough to signal that development of z-axis capability should be a top priority.'' Google states that ''industry has risen to the challenge with manifold options to enable z-axis capability,'' including the barometric pressure sensor-based solutions developed by NextNav and Polaris and ''handset-based solutions like ELS [that] have been widely deployed around the world.'' Google credits this rapid and widespread availability of z-axis capable devices to the Commission's flexible and evolutionary approach to location accuracy.

27. What is more, both NextNav and Polaris have software-based solutions. Thus, if carriers choose either of these solutions, hardware upgrades to handsets are not required and solutions can be implemented by means of software modifications that are readily achievable ahead of the 2021 deadline. The record describes scalable methods of implementation for barometric-based solutions that do not require hardware changes.'' As Polaris states, ''[o]ne method is to implement adopted 3GPP [3rd Generation Partnership Project] and OMA [Open Mobile Alliance] standards for barometric compensation'' which is

a ''firmware-based approach [that] is achievable through cooperation among carriers, device manufacturers, and chipmakers.'' Another method Polaris describes is to ''place necessary functionality on devices,'' which is a ''software-based approach [that] is achievable through cooperation among carriers, location vendors, and device Operating System providers.'' Polaris maintains that it ''can support a variety of implementation methodologies and remains committed to work with carriers and other involved parties to implement any agreed upon methodology.'' NextNav also states handsets can be made z-axis compliant with over-the-air updates.

28. We disagree with some commenters that suggest that old handsets should be categorically excluded from the rules; they do not propose or provide a clear rationale for a specific cutoff. Instead, we apply the metric to all z-axis capable devices, as supported by commenters like AT&T.

29. We also disagree with CTIA who suggests we apply the metric only to devices ''equipped with barometers and any other functionality necessary to support barometric pressure-based altitude estimation solutions.'' As APCO argues, this approach would violate the principle of technological neutrality. We have previously recognized that no single technological approach will solve the challenge of indoor location, and we have consistently favored technologically neutral rules ''so that providers can choose the most effective solutions from a range of options.'' Although both technologies tested in Stage Z relied on barometric pressure sensor capable handsets, and it is possible that the carriers could adopt barometric-based solutions exclusively, other vertical location technologies may develop that do not require a barometric sensor in the handset. In fact, Google has stated that its Stage Z testing will include solutions that do not use barometric pressure sensors. Therefore, in order to preserve the technological neutrality of the rules and encourage development of the broadest possible array of vertical location technologies, the metric will not be limited to barometric pressure sensor capable handsets.

30. Qualcomm and Google raise a concern that vertical location technology needs to be standardized so it can be ''economically implemented.'' However, Verizon states that ''extensive standardization work on vertical location solutions has already been completed,'' and further work is under way. Apple states that ''vertical location accuracy performance requirements should be evaluated in the context of solutions that must be implemented at large scale, subject to real world operational considerations,'' and ''[t]echnologies that depend on the deployment of new infrastructure in every major city to achieve even less-stringent performance metrics also raise significant questions about the viability of the tested approaches.'' BRETSA also comments that ''one would expect the accuracy of vertical location systems to improve as they are deployed ''at scale'' and additional experience with them is gained.'' We also recognize that if carriers use barometric sensor based solutions, they will depend to some extent on third parties to support proper installation and calibration of barometric sensors in user devices, and that solutions will only work if the systems are compatible and information is correctly relayed between providers, the handset and operating system providers, and the PSAPs. However, while we acknowledge CMRS providers' concerns about their ability to compel handset manufacturers and operating system providers to cooperate, we believe CMRS providers are capable of negotiating requirements with such third parties and establishing contractual timelines that will enable timely deployment of z-axis solutions in time to meet the deadlines in the rules. Moreover, the flexible, technology-neutral approach to location requirements adopted in this order removes uncertainty and will give carriers greater leeway to negotiate with competing vendors and to leverage location solutions already being developed by handset manufacturers and operating system providers.

C. Reporting Z-Axis Location Information

31. In the Fourth Further NPRM, we sought comment on how CMRS providers should report vertical location information, noting that several measurement methods exist. Specifically, we sought comment on whether reporting vertical location information as height above ground level (AGL) would be preferable to reporting height above mean sea level (MSL), and whether to require CMRS providers to use one measurement standard exclusively. We asked commenters to address whether CMRS providers should be required to identify the floor level when reporting z-axis information. Alternatively, we asked whether we should decline to specify this level of detail so that entities developing z-axis solutions have more flexibility.

32. We require CMRS providers to report z-axis information as Height Above Ellipsoid (HAE). In this regard, NENA and several other commenters point out that while vertical location information can be reported in multiple ways, *e.g.,* HAE, MSL, or AGL, global standards are being developed around the measurement of such information as a value in HAE in meters, as defined in the World Geodetic System 1984 (WGS–84). NENA notes that 3GPP is developing standards relating to representation of vertical location information that are based on HAE, and industry commenters generally agree with NENA that HAE has emerged as the globally recognized standard for generating z-axis measurements.

33. There is a general consensus around using HAE as the baseline for measuring vertical location, but we recognize that the issue of how vertical location information should be reported to PSAPs is complex. ATIS ESIF argues that individual PSAPs may have different requirements for the processing and formatting of vertical location information, and that CMRS providers should not be required to convert location data into multiple formats. ATIS, AT&T, and T-Mobile suggest that CMRS providers should be responsible only for providing raw location data that meets the z-axis metric, and that PSAPs should be responsible for translating that data into a floor number or other actionable information. APCO counters that PSAPs do not have the resources to convert raw z-axis data to a floor number, ''nor do they have three-dimensional maps to visualize raw z-axis information.'' APCO argues that PSAPs ''will be left without actionable vertical location information'' unless CMRS providers are required to convert z-axis data to a floor level that is reported to the PSAP.

34. In arguing for floor level, APCO says that the Commission should also require carriers to provide floor level identification. Given the need for timely deployment on our existing timeline, we disagree. While public safety commenters broadly support the delivery of floor level information, the record is clear that it is not now technically feasible to reliably convert z-axis information to an identified floor level. ATIS states that ''there currently exists no data source that correlates any form of z-axis data to a floor index or floor label.'' CTIA recognizes public safety's desire for the most actionable information, but states that it ''is not aware of any z-axis technology solutions that can produce specific floor level information.'' Apple observes ''that providing the ''floor level'' information

alongside a z-axis estimate would necessarily require information on the geodetic position of floors and knowledge of the labels applied to individual floors (*e.g.,* ''mezzanine'', ''courtyard''),'' and Apple is ''not aware of any sources for this information.'' Apple also states that it is ''unclear how uncertainty information could be effectively conveyed under such a regime,'' and that ''both horizontal and vertical uncertainty would be relevant to floor level information, as buildings implement floor levels in different ways.'' In support of its argument, APCO cites an academic paper and trade press reports on emerging floor level reporting technologies, stating that they prove providing floor level is already technically feasible. Other commenters take issue with APCO sources, and CTIA points out that APCO claims are not supported by testing. While the sources cited by APCO suggest potential floor level location solutions may be on the horizon, the record here reflects that such solutions are untested and not yet sufficiently mature to support a comprehensive floor level requirement. Further, as NENA and BRETSA recognize, floor heights are not standard and an authoritative database for the mapping of floors in a given building does not yet exist, while building characteristics themselves vary greatly and floor numbering is not always consistent. Verizon notes that ''floor level accuracy may depend at least in part on participation by not only service providers and vendors but third party building owners and tenants—which would have technical feasibility and jurisdictional implications beyond the scope of the rules contemplated in this proceeding based on test bed performance to date.''

35. Current vertical location technology does not support floor level identification, and some public safety commenters, including the International Association of Fire Fighters and the International Association of Fire Chiefs, state that, contrary to APCO's view, z-axis data can provide actionable information to first responders. As they put it: ''Unlike x/y data, which must be translated from lengthy coordinates to an approximate street address, Height Above Ellipsoid (HAE) altitude data is transmitted in digestible numbers, extending no more than two decimal points. While technologies exist that allow an Emergency Communications Center to translate vertical data from HAE to Height Above Ground Level, emergency responders can act upon the data when it is delivered in either format by simply matching altitude information on their own equipment using an HAE-capable application, device or dedicated wearable display.'' And other public safety organizations like NENA agree.

36. We agree and reject the notion that the only ''actionable'' data we can mandate today is a floor estimate. Many buildings, including the Commission's headquarters, have non-standard floor numbering schemes, which may not begin on Floor 1 but, instead, ''Lobby,'' ''Main,'' or ''Ground.'' Some buildings skip Floor 13. There is significant risk of error to solutions that assume ground-level floor numbers or standard floor numbering patterns. The record does not show that this risk can be mitigated sufficiently in the near-term such that we could proceed immediately with a decision that requires a floor-level solution. Besides, to first responders, a true height measurement may be more valuable than floor level information. Floors can collapse, rendering a floor estimate less useful. Floor numbering can be difficult to track in an emergency. First responders may not know on what floor they are entering a building, or they may become disoriented during a lengthy search. They may not know whether ''Floor X'' is above or below them, but by attaching a true height device to their gear, they may be able to learn how close they are to a victim as they approach the origin of a 911 call. This functionality may prove very useful to first responders who try to locate downed or disoriented teammates in an emergency. And a true height measurement is useful (unlike a floor estimate) to a first responder searching outside for a person in need of help.

37. For all these reasons, we decline to require CMRS providers to report floor level where it is not technically feasible to do so and instead require that they deliver z-axis information in HAE. However, we agree with Texas 911 Entities that in cases where the carrier has reliable information about the caller's floor level, they should provide it.

38. We require CMRS providers to deliver z-axis information in HAE, and we do not require CMRS providers to translate from HAE to other formats. The record suggests that translation mechanisms can be developed using HAE as a baseline reference, and that for the time being we should afford industry and public safety flexibility to develop solutions that are cost-effective for both sides. Finally, we agree with public safety commenters that providing a floor level is a priority and therefore seek comment below on the feasibility of ensuring emergency personnel have access to floor level information in the longer term.

D. Confidence and Uncertainty Data

39. In the Third Further NPRM in this proceeding (79 FR 17820 (March 28, 2014)), the Commission proposed to require provision of confidence and uncertainty data for the location information provided with all wireless 911 calls, whether outdoor or indoor, on a per-call basis at the request of a PSAP, with a uniform confidence level of 90%. The Commission anticipated that any requirements adopted regarding standardization of the delivery and format of confidence and uncertainty data would apply in conjunction with the delivery of both indoor and outdoor location information. In the Fourth Report and Order, the Commission adopted specific confidence and uncertainty requirements for horizontal (x- and y-axis) data for all wireless 911 calls. The rules require that the data specify ''[t]he caller's location with a uniform confidence level of 90 percent'' and ''[t]he radius in meters from the reported position at that same confidence level.'' Because the Fourth Report and Order deferred the adoption of a z-axis metric, it also deferred action on extending confidence and uncertainty requirements to z-axis data.

40. We amend our rules to extend the equivalent confidence and uncertainty requirements to z-axis data. As commenters point out, it is just as important for PSAPs to be able to assess the reliability of vertical location information as it is to assess the reliability of horizontal location information. APCO states that without uncertainty data ''public safety professionals would lack information that is essential when deciding whether to break down a door or how to develop a search strategy.'' NENA asserts that it is critical that all location information, including z-axis, include detailed uncertainty information. BRETSA supports the provision of confidence and uncertainty data along with z-axis information to help public safety assess data that may include sources of error. NextNav and Polaris support extending confidence and uncertainty requirements to z-axis data and indicate that their technologies can generate vertical confidence and uncertainty data for each call that can be provided to the PSAP.

41. In light of the public safety benefits of confidence and uncertainty data, we require CMRS providers to provide vertical confidence and uncertainty data on a per call basis to requesting PSAPs. As with horizontal

confidence and uncertainty data, providers must report vertical confidence and uncertainty data using a confidence level of 90%, *i.e.,* they must identify the range above and below the estimated z-axis position within which there is a 90% probability of finding the caller's true vertical location. For the same reasons, where available to the CMRS provider, floor level information must be provided with associated C/U data in addition to z-axis location information.

E. Compliance Certification and Call Data Reporting

42. Under our existing rules, CMRS providers, within 60 days after each horizontal and vertical location benchmark, ''must certify that they are in compliance with the location accuracy requirements applicable to them as of that date.'' The rules require CMRS providers to ''certify that the indoor location technology (or technologies) used in their networks are deployed consistently with the manner in which they have been tested in the test bed.'' In the Fourth Further NPRM, we proposed to use this same certification mechanism to validate provider compliance with the 3-meter metric.

43. We adopt our proposal. In order to be deemed in compliance under our existing rules, nationwide CMRS providers electing to use z-axis technology for vertical location shall certify for purposes of the April 2021 and April 2023 compliance deadlines that z-axis technology is deployed consistent with the manner in which it was tested in the test bed. Commenters generally support this proposed compliance mechanism. As CTIA outlines, ''the Test Bed would validate that a given technology solution can meet the proposed z-axis metric of ± 3 meters for 80 percent of indoor wireless calls in the Test Bed, and a wireless provider would then certify that the z-axis technology in its network is deployed consistently with how it was tested in the Test Bed.'' Verizon states that requiring compliance through the test bed process ensures ''that solutions perform as vendors contend, and that they are technically feasible,'' and it is also consistent with the Commission's approach to horizontal accuracy.

44. APCO notes that in Stage Z, only barometric sensor-based technologies were tested in the test bed, and questions whether the test bed is configured to test all vertical location technologies on a technology-neutral basis. We believe the test bed is configured to support technology neutral testing. The Commission has previously stated that the core purpose of the test bed is to provide a means to evaluate ''the accuracy of different indoor location technologies across various indoor environments.'' Thus, the test bed is not limited to testing barometric sensor solutions, but is designed to test all vertical location solutions in a uniform set of indoor test environments. We also note that Google's testing in Stage Za includes testing of technologies that are not barometric sensor-based.

45. BRETSA recommends that instead of using the test bed, the Commission should establish a ''proof-of-performance'' method of compliance with live call testing in each market. CTIA urges the Commission to reject this approach. We decline to require live call proof-of-performance testing. In establishing the test bed approach, the Commission found it to be ''the most practical and cost-effective method for testing compliance with indoor location accuracy requirements.'' Indeed, the purpose of the test bed program is to provide a reliable mechanism for validating the performance of indoor location technologies without the need for the provider to conduct indoor testing in all locations where the technology is actually deployed, which would be impractical and highly burdensome. Accordingly, we decline to adopt or require proof of performance testing.

46. CTIA recommends that we add the language ''as measured in the test bed'' at the end of proposed § 9.10(i)(2)(ii)(C)&(D), ''thus making explicit in the rules what is in the Fourth Further [NPRM].'' We find that the existing rules already clearly identify the test bed as the basis for certifying compliance of all indoor location technologies, horizontal and vertical, making CTIA's proposed amendment unnecessary.

47. In addition, to more fully inform the Commission's understanding of location accuracy progress, we expand the live call data reporting obligations in our existing rules to include z-axis data and, where available, floor level information. The Commission's live call data reporting rules require nationwide CMRS providers to file quarterly reports of their aggregate live 911 call use of each location technology in four geographic morphologies within six representative cities (Test Cities). Non-nationwide CMRS providers must report aggregate live 911 call data collected in one or more of the Test Cities or the largest county in their footprint, depending on the area served by the provider.

48. To date, CMRS providers have only reported on horizontal location technologies used for live 911 calls. However, we conclude that it is equally appropriate to require CMRS providers to report on live call use of vertical location technologies. The Commission's live call data reporting requirements established in the Fourth Report and Order require CMRS providers to ''identify and collect information regarding the location technology or technologies used for each 911 call in the reporting area during the calling period,'' without distinguishing between reporting of horizontal and vertical location information. Moreover, in the indoor location technologies context, a key purpose of the reporting requirement is to ''augment our understanding of the progress of such technologies.'' Although our vertical location requirements do not include live call compliance metrics, reporting on the use of z-axis and floor level technologies in live calls will provide important real-world data on how frequently z-axis and floor level location is provided, the types of technologies being used, and trends in such usage over time. We emphasize, however, that live call data reported by CMRS providers relating to the use of live call and floor level technologies will be used solely for informational purposes, not compliance purposes.

F. Z-Axis Privacy and Security

49. In the Fourth Further NPRM, we sought comment on the appropriate data privacy and security framework for z-axis data. We noted that in establishing rules in 2015 governing CMRS provider usage of the NEAD, the Commission had stated that '''certain explicit requirements on individual CMRS providers are necessary to ensure the privacy and security of NEAD data and any other information involved in the determination and delivery of dispatchable location.' '' We asked whether use of z-axis data should be limited to 911 calls except as otherwise required by law, and if such a limitation should be implemented and codified in a manner similar to the explicit limitations applicable to the NEAD.

50. We amend our rules to make explicit that CMRS providers and the vendors upon which they rely for z-axis information may only use 911 call z-axis information for 911 purposes, except with prior express consent or as required by law. This approach is consistent with our long-standing approach to protection of 911 location data. Section 222 of the Communications Act requires CMRS

providers, among others, to protect the confidentiality of Customer Proprietary Network Information (CPNI) without the customer's express prior authorization, but provides an exception for the provision of a customer's call location information to a PSAP or other emergency response authority in connection with a 911 call. CTIA also states that it ''shares the Commission's view that location information derived from wireless 9–1–1 calls, including Z axis location data, should only be used for 9–1–1 purposes, except as otherwise provided by law.'' And we agree with Apple that other parties—such as device manufacturers and third-party location technology vendors—on whom carriers rely for z-axis information should be similarly subject to the same privacy protections and restrictions on non-911 use as data stored or used by CMRS providers. For the same reasons as we relied on in the dispatchable location context, we believe that CMRS providers are already responsible for third-party use of personal location information in support of the carrier's delivery of E911 location data to the PSAP. To ensure compliance, we agree that a certification requirement is appropriate. CMRS providers must therefore certify that neither they nor any third party they rely on to obtain z-axis information for 911 purposes will use such information for any non-911 purpose, except with prior express consent or as required by law. We also make clear that such a certification should not be construed to ''significantly impede location technology vendors by preventing them from having access to z-axis information for such valid purposes as system calibration and accuracy verification.'' Such a reading of these requirements that would impede the swift development and widespread deployment of z-axis technologies for use in emergency calls would be contrary to the very purpose of this proceeding.

51. We also conclude that any 911-related z-axis or floor level information that is stored before or after the 911 call should be subject to the same privacy and security protections that apply to NEAD data. We agree with Public Knowledge that all 911 location data should be treated consistently from a privacy and security perspective, and that stored coordinate-based data, including z-axis data, should not be subject to lesser consumer privacy and data protection than NEAD data. As Precision Broadband puts it, we should ''not decouple the choice of deploying z-axis technology from dispatchable location,'' as z-axis data is part of a holistic, multifaceted approach ''to solving the vertical location problem.'' Consistent with the 2015 Fourth Report and Order, however, the practical application of this principle in the geolocation context may be dissimilar is some ways from its application in the dispatchable location context. For example, coordinate-based geolocation does not necessarily rely on previously stored customer location information in a database, and geolocation information generated at the time of a 911 call may be discarded rather than stored for later use. Therefore, we conclude that any 911 geolocation data that is stored by a CMRS provider should be subject to the same level of privacy and security protection as NEAD data. Thus, if a CMRS provider intends to store such data for 911 location purposes (like any other stored data not covered by a NEAD privacy and security plan), it ''should file an addendum to ensure that the protections outlined in the NEAD plan will cover the provider's [coordinate-based] location transactions end-to-end.'' For 911 geolocation data that is not stored, our CPNI requirements continue to apply and prohibit unauthorized use of such data for any purpose other than emergency location.

52. We also clarify that we are in no way altering or addressing existing privacy or security rules or policies that apply to location data outside the 911 context. We agree with CTIA that such issues are outside the scope of this proceeding.

G. Comparison of Benefits and Costs

53. In the Fourth Further NPRM, we sought comment on ''which z-axis metric would allow [the Commission] to achieve the anticipated level of benefits in the most cost-effective manner.'' We tentatively concluded that ''a z-axis metric of 3 meters for 80% of calls strikes the best balance between benefits and costs'' because ''some public safety commenters identify a 3-meter metric as providing sufficient accuracy to identify the caller's floor level in most cases.'' We also tentatively concluded that ''the value of a 3-meter metric exceeds that of a 5-meter metric because the latter would result in a significant reduction'' in benefits. A 5-meter metric could indicate a location up to 2 floors below, or up to 2 floors above, the actual floor where a 911 caller may be located. This large search range would make it far more likely that first responders would need to search 2 or more additional floors, significantly increasing average emergency response times and consequently degrading patient outcomes. ''Due to the likely degradation of patient outcomes with a 5-meter metric,'' we tentatively concluded that a 3-meter metric provided greater value and sought comment on the conclusion. We also tentatively concluded that the ''value of a 3-meter metric exceeded that of a 2-meter metric.'' We also sought comment on how the benefits and costs of ''requiring CMRS providers to identify floor level when reporting z-axis information would compare to the benefits and costs of providing z-axis information as AGL or MSL height.'' We sought ''comment on this analysis and tentative conclusions as to the comparative value of the z-axis metrics.''

54. We conclude that a 3-meter z-axis metric is technically achievable and can be implemented successfully by CMRS providers by the April 2021 and 2023 deadlines in the top 25 and 50 CMAs, respectively. As the record reflects, a 3-meter metric will provide a substantial benefit to public safety because it will ''identify the correct floor of wireless callers to E911 in most instances.'' Additionally establishing a 3-meter metric will afford certainty that will drive innovation to create more z-axis location technological options for CMRS providers and lower technology costs. We now address the benefits and costs of the 3-meter metric.

55. Implementation benefits. In assessing the benefits of adopting a 3-meter metric, our analysis begins with the analysis presented in the Fourth Report and Order in this proceeding. There, the Commission sought to reduce emergency response time to improve patient outcomes and, ultimately save lives. In the Salt Lake City analysis referenced in the Third Further NPRM, the Commission found that a one minute increase in response times increases mortality, and that a one minute decrease in response times decreases mortality. The Commission further found that reducing response times would result in an annual saving of 746 lives as reflected in the Salt Lake City analysis, which could amount to 10,120 lives annually when extrapolated across the United States.

56. No commenter disputes the benefits of reduced emergency response times on patient outcomes, but NextNav suggests that the ''Commission's analysis made very conservative assumptions and still arrived at an overwhelming economic benefit to the nation.'' Additionally, the International Association of Fire Fighters and NextNav emphasize that compelling evidence exists in the record in this proceeding that the provision of vertical

location information to first responders with an accuracy of 3 meters would reduce response times as compared to not specifying a vertical metric or a less granular metric. NextNav observes that San Francisco emergency first responder field tests in 2014 ''revealed dramatic reductions of between 4 and 17 minutes in search times with the addition of vertical information with an accuracy of +/−3 meters.'' We agree with NextNav's assertion that due to these ''substantial'' emergency response time improvements, the Commission's factoring of a one minute response time in its benefits analysis underestimates ''by a substantial amount the quantifiable benefits of providing emergency first responders with z-axis information with an accuracy of 3 meters.''

57. The record reflects ''increasing use of wireless phones by the public, thus further increasing the benefits that can be expected from the adoption of a 3 meter vertical metric.'' As we stated in the Third Further NPRM, the addition of vertical location information—like the further refinement of horizontal location information—plays a major role in achieving the $92 billion benefit floor for improving wireless location accuracy. As we affirmed in the Fourth Further NPRM, this addition of new vertical information—together with the refinement of existing horizontal information—has the potential of saving ''approximately 10,120 lives annually at a value of $9.1 million per statistical life, for an annual benefit of approximately $92 billion or $291 per wireless subscriber.'' Due to U.S. Department of Transportation updates for value of a statistical life, we presently estimate this annual benefit floor at $97 billion.

58. Implementation costs. The record indicates that software and hardware implementation costs are low, if not negligible. NextNav asserts that its z-axis solution, which requires only software changes to be made to each handset, could be made available for a nominal cost that amounts to significantly less than a penny per month per handset and would impose no incremental cost burdens on new handsets. Polaris states that its z-axis solution is ''objectively affordable'' because it is software-based, does not require hardware in networks or markets, and ''does not require anything special in devices beyond implementation of adopted 3GPP and OMA standards.'' Polaris' solution also is ''instantly available and deployable throughout a carrier's nationwide network.'' As the Commission noted in the Fourth Report and Order, we continue to expect that these costs ''will decline as demand grows.'' Existing smartphone devices with installed barometric pressure sensors, can be further calibrated over-the-air with calibration signals from weather stations. Such calibration software is available ''with no additional premium costs.'' NextNav estimates that given these factors, 3-meter compliant z-axis services can be provided ''at a nominal cost (in aggregate, less than a penny per month per handset).'' Moreover, with the emergence of handset-based solutions we expect costs to provide vertical location to further decrease. In addition to the barometric pressure sensor-based solutions developed by NextNav and Polaris, ''handset-based solutions like ELS have been widely deployed around the world.''

59. Beyond software solutions, hardware solutions are additionally nominal, as ''nearly all smartphones on the market appear to be equipped with barometric pressure sensors.'' One commenter notes that adding barometric sensors to phones does and will entail additional costs, but the cost of those sensors continues to drop. We clarify that we amend our rules today to apply our 3 meter metric to z-axis capable devices—in other words, we are not mandating retrofitting of older devices with barometric sensors, thus obviating such costs or, as technological developments unfold, retrofitting older devices in any manner to make such devices z-axis capable.

60. Cost/benefit comparison. We reaffirm our earlier decision that implementation of a 3-meter metric for vertical location accuracy will account for a large share of the total annual benefit floor, which we presently estimate to be a total of $97 billion. Because that estimate includes only the value of statistical lives saved, we expect that there will be many additional benefits—which we are unable to quantify—from the reductions in human suffering and the reduced property losses due to crime and uncontrolled fires. We derive our cost from an estimated annual handset cost of ''a penny per month per handset'' or $0.12 per year. Assuming there are some 300 million handsets presently in use, we apply the per-year handset cost to estimate a cost ceiling of approximately $36 million per year. Accordingly, we find that the estimated benefits of this instant rules far outweigh the estimated costs.

IV. Procedural Matters

61. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in the Fifth Report and Order. The FRFA is set forth in Appendix C of the Fifth Report and Order.

62. *Paperwork Reduction Act Analysis.* The requirements in § 9.10(i)(2)(ii)(C) and (D), (i)(4)(v), and (j)(4), constitute modified information collections. These requirements solicit information for a certification of z-axis information use, and confidence and confidence and uncertainty data, respectfully. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements in § 9.10(i)(2)(ii)(C) and (D), (i)(4)(v), and (j)(4), will be unduly burdensome on small businesses. Applying these new or modified information collections will promote 911 service and emergency response, to the benefit of all size governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing greater confidence in 911 location accuracy and greater consistency between the Commission's horizontal and vertical location rules. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

63. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Fifth Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

64. *Further Information.* For further information, contact Nellie Foosaner, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2925 or via email at *Nellie.Foosaner@fcc.gov;* or

Alex Espinoza, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0849 or via email at *Alex.Espinoza@fcc.gov.*

V. Final Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFAs) was incorporated in the Fourth Further Notice of Proposed Rulemaking (Fourth Further NPRM) adopted in March 2019. The Commission sought written public comment on the proposals in the Notice including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

66. The Fifth Report and Order advances the Commission's goal of ensuring ''that all Americans using mobile phones—whether they are calling from urban or rural areas, from indoors or outdoors—have technology that is functionally capable of providing accurate location information so that they receive the support they need in times of an emergency.'' In the Fifth Report and Order, the Commission adopts a metric to more precisely identify the location of a 911 wireless caller located in a multi-story building. More specifically, the Commission amends its rules to require the provisioning of vertical location (z-axis) information that would help enable first responders to identify the caller's floor level within 3 meters for most wireless calls to 911 from multi-story buildings, which represents a critical element to achieving the Commission's indoor location accuracy objectives. Consistent with the regulatory framework established in the last major revision of the Commission's wireless location accuracy rules in 2015 and the information developed in the associated docket, the Fifth Report and Order adopts a z-axis location accuracy metric of 3 meters above or below a handset for 80 percent of wireless Enhanced 911 (E911) indoor calls from z-axis capable devices as demonstrated in the test bed used to develop and test proposed z-axis accuracy metrics. CMRS providers must deliver z-axis information in Height Above Ellipsoid (HAE). Where available to the CMRS Provider, CMRS providers must deliver floor level information with z-axis location. The Commission will also apply its current Confidence and Uncertainty (C/U) data requirements for x/y location information to z-axis and, where available, floor level information that will be collected and provisioned by CMRS providers. The Commission extends to z-axis location and, where available, floor level information existing compliance certification and live call data reporting requirements applicable to CMRS providers. Additionally, the Commission extends consumer privacy and data security protections to 911 calls that convey z-axis location and, where available, floor level information in the Fifth Report and Order.

67. For z-axis compliance, the Fifth Report and Order requires CMRS providers to use a technology proven to meet the 3-meter metric in the test bed. The adopted metric should augment the ability of Public Safety Answering Points (PSAPs) and first responders to more accurately identify the floor level for most 911 calls made from multi-story buildings, reduce emergency response times, and, ultimately, save lives. It also implements the final element of the Commission's existing indoor location accuracy regime, which already includes a timetable for CMRS providers to deliver vertical location information by deploying either dispatchable location or z-axis technology in specific geographic areas. The adopted z-axis metric provides certainty to all parties and establishes a focal point for further testing, development, and implementation of evolving z-axis location technologies. The Fifth Report and Order also clarifies that z-axis location and, where available, floor level information may only be used for 911 purposes except as required by law. In addition, the Fifth Report and Order amends the location accuracy rules to require CMRS providers to deliver confidence and uncertainty data along with z-axis information and, where available, floor level information.

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

68. There were no filed comments that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

69. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

70. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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

72. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

73. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

74. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of

this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

1. Telecommunications Service Providers

a. Wireless Telecommunications Providers

75. Pursuant to 47 CFR 20.18(a), the Commission's 911 service requirements are only applicable to CMRS providers, excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

76. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

77. All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

78. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband personal communications services (PCS) service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

79. *Competitive Local Exchange Carriers (Competitive LECs). Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

80. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

81. *Narrowband Personal Communications Services.* Two auctions of narrowband PCS licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order (65 FR 35843 (June 6, 2000)). Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for

the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

82. *Offshore Radiotelephone Service.* This service operates on several ultra-high frequency (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. U.S. Census Bureau data in this industry for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this SBA category and the associated small business size standard, the majority of Offshore Radiotelephone Service firms can be considered small. There are presently approximately 55 licensees in this service. However, the Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite).

83. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

84. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies herein.

85. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

86. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

87. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

88. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order (65 FR 17594 (April 4, 2000), the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

89. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The

Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

90. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order (72 FR 48814 (Aug. 24, 2007)). An auction of 700 MHz licenses commenced January 24, 2008, and closed on March 18, 2008, which included: 176 Economic Area licenses in the A-Block, 734 Cellular Market Area licenses in the B-Block, and 176 EA licenses in the E-Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

91. *Upper 700 MHz Band Licenses.* In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

92. *Wireless Resellers.* The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for wireless resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Wireless Resellers are small entities.

b. Equipment Manufacturers

93. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry can be considered small.

94. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 862 establishments that operated that year. Of this total, 843 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

95. The Fifth Report and Order enacts a z-axis (vertical) location accuracy metric that will affect the reporting, recordkeeping and/or other compliance requirements of small and other size CMRS providers—both nationwide and non-nationwide. Under the current E911 location accuracy rules, by 2021, nationwide CMRS providers must deploy either (1) dispatchable location, or (2) z-axis technology that achieves the Commission-adopted z-axis metric in each of the top 25 Cellular Market Areas. If z-axis technology is used, CMRS providers must deploy z-axis technology to cover 80 percent of the Cellular Market Areas population. By 2021, nationwide CMRS providers must deploy dispatchable location or z-axis technology complying with the Commission-adopted z-axis metric in each of the top 50 Cellular Market

Areas. Small entities that are non-nationwide carriers, including resellers, that serve any of the top 25 or 50 CMAs will have an additional year to meet the two benchmarks (*i.e.,* until 2022 for the top 25 Cellular Market Areas and 2024 for the top 50 Cellular Market Areas). CMRS providers must deliver z-axis information in Height Above Ellipsoid. Where available, CMRS providers must deliver floor level information with z-axis location.

96. The Fifth Report and Order requires nationwide and non-nationwide CMRS providers that deploy z-axis technology to provide vertical location information within a 3 meters metric under the Commission's existing location accuracy requirements timelines. While the Commission does not mandate a specific technology for z-axis compliance, we require CMRS providers to use a technology proven to meet the 3-meters metric in the test bed. In order to be deemed in compliance, CMRS providers using z-axis technology for vertical location must certify that the z-axis technology is deployed consistently with the manner in which it was tested in the test bed. The Fifth Report and Order also requires CMRS providers to comply with the Commission's current confidence and uncertainty (C/U) requirements for x/y location information for z-axis location information in addition to horizontal location, for 911 calls in the top 50 CMAs. As we stated in the Fifth Report and Order, we anticipate this data ''can be furnished to PSAPs at minimal cost to CMRS providers given that they already provide C/U data for x/y calls.'' Where available, CMRS providers must provide floor level information and associated C/U data in addition to z-axis location information.

97. In order to be deemed in compliance under our existing rules, we clarify that nationwide CMRS providers electing to use z-axis technology for vertical location shall certify for purposes of the April 2021 and April 2023 compliance deadlines that z-axis technology is deployed consistent with the manner in which it was tested in the test bed. Non-nationwide providers will have an additional year to make each certification. In addition, to more fully inform the Commission's understanding of location accuracy progress, we extend the live data calling reporting obligations existing in the rules to z-axis. The Commission live call data reporting rules require nationwide CMRS providers to file quarterly reports of their aggregate live 911 call location data for each location technology used within four geographic morphologies within six representative cities (Test Cities). Non-nationwide CMRS providers must report the aggregate live 911 call data collected in one or more of the Test Cities or the largest county in their footprint, depending on the area served by the provider. We extend these reporting requirements to include z-axis information and, where available, floor level information in the live call data reporting already in the Commission's rules for our informational purposes.

98. The Commission clarifies in the Fifth Report and Order that CMRS providers may only use z-axis location and floor level information for 911 purposes except with prior express consent or as required by law. Prior to use of z-axis information and floor level information contained in the NEAD, CMRS providers are required to certify that they will not use z-axis, floor level, or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that the CMRS provider will provide z-axis location and floor level information privacy and security protection equivalent to the NEAD. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected in generating z-axis and floor level data. Additionally, we require CMRS providers to certify that neither they nor any third party they rely on to obtain z-axis and floor level information for 911 purposes will use such information for any non-911 purpose, except with prior express consent or as required by law.

99. In the Fourth Further NPRM, the Commission tentatively concluded based on the z-axis solution test results and other comments, that a metric of 3 meters for 80% of indoor calls is technically achievable and that z-axis solutions capable of meeting this metric can be deployed within the timeframes established in the E911 location accuracy rules. We also tentatively concluded that the cost of compliance with the 3-meter metric is relatively low. We affirm these conclusions with our adoption of the 3-meters metric requirement in the Fifth Report and Order. In order to comply with the 3-meters metric requirement, small entities may incur costs associated with software and/or hardware changes and may need to employ engineers or other experts. While the Commission cannot quantify the cost of compliance with the requirements, the technology solution a small entity chooses to implement the requirement will ultimately determine the nature of the costs it incurs.

100. Evidence in the record indicates that small entities have a choice of vendors with z-axis technology solutions, which will allow them to manage their costs. Moreover, having a competitive market for such solutions should lessen the costs for small entities to comply with the rules. In the proceeding, parties provided examples of various technology solutions that are currently available to small entities and other CMRS providers and general information on the implementation requirements. NextNav a vendor that participated in Stage Z testing indicated that its z-axis solution which only requires software changes to be made to each handset, could be made available for a nominal cost that amounts to significantly less than a penny per month per handset. Another test vendor, Polaris, indicated that its solution is instantly available and deployable throughout a carrier's nationwide network. Polaris also asserted that its solution is ''objectively affordable'' because it is software-based, does not require hardware in networks or markets, and ''does not require anything special in devices beyond implementation of adopted 3GPP and OMA standards.'' Google who announced development and deployment of its Emergency Location System (ELS) in the U.S. for Android devices and testing in Stage Za, indicated that ELS is ''a supplemental service that sends enhanced location directly from Android handsets to emergency services when an emergency call is placed.'' Google also indicated that ELS is part of the Android operating system and does not require any special hardware or updates. Apple has announced that it will use new technology to quickly and securely share Hybridized Emergency Location information with 911 call centers. The HELO ''solution has offered z-axis estimates and uncertainties beginning in 2013, and those estimates have been consumed by carriers since its first adoption in 2015.'' Apple has committed to improving its vertical, as well as horizontal, location accuracy and will participate in CTIA's z-axis testing by the end of 2020. With the addition of other vertical location technologies and vendors into the market, the Commission expects small entities will have more implementation options and that technology costs will decline as demand grows, which could further reduce their cost of compliance.

101. The Commission does not believe that the new or modified information collection requirements in § 9.10(i)(2)(ii)(C) and (D), (i)(4)(v), and (j)(4), will be unduly burdensome on small businesses. Applying these new or

modified information collections will promote 911 service and emergency response, to the benefit of all size governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing greater confidence in 911 location accuracy and greater consistency between the Commission's horizontal and vertical location rules. We provide the following analysis:

102. The Commission amends § 9.10(i)(2)(ii)(C) and (D) to require the provisioning of dispatchable location or z-axis location information. As stated in the Fifth Report and Order, where available to CMRS Providers, floor level information must be reported with z-axis location information. The Commission adopts § 9.10(i)(4)(v) to require all CMRS providers to certify that they will not use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers will provide z-axis location information privacy and security protection equivalent to the NEAD. Additionally, under § 9.10(i)(4)(v), we require CMRS providers to certify that neither they nor any third party they rely on to obtain z-axis location information for 911 purposes will use such information for any non-911 purpose, except with prior express consent or as required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected in generating z-axis data. The Commission adopts § 9.10(j)(4) to extend confidence and uncertainty (C/U) requirements to wireless E911 calls that provide z-axis and floor level information in the top 50 CMAs, for CMRS providers, in addition to horizontal location. As we stated in the Fifth Report and Order, we also anticipate this data ''can be furnished to PSAPs at minimal cost to CMRS providers given that they already provide C/U data for x/y calls.'' The Commission anticipates the burden and cost levels of these requirements to be similar to the existing collections which OMB approved under OMB Control No. 3060–1210, ICR Reference No: 201801–3060–010. Additionally, the Commission anticipates extending the burden and cost burdens associated with extending the existing compliance certification and live call data report requirements to CMRS Providers that deploy z-axis information to be similar to the existing collections which OMB approved under OMB Control No. 3060–1210, ICR Reference No: 201801–3060–010. The Commission seeks comment on these costs in its upcoming Paperwork Reduction Act comment periods.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

104. Based on a comparison of the benefits and costs to alternatives metrics, the Commission believes that the 3-meter metric adopted in the Fifth Report and Order is the most cost-effective option for achieving the Commission's location accuracy and public safety objectives in this proceeding while avoiding placing undue burdens on small entities and other CMRS providers. While the rules adopted in the Fifth Report and Order will apply to all nationwide and non-nationwide CMRS in the same manner, the Commission has taken steps to accommodate non-nationwide CMRS providers by supplying additional time to comply with the adopted vertical location accuracy benchmarks. Non-nationwide CMRS providers which tend to be small entities have an additional year to comply with the Commission's z-axis benchmarks. The Commission also declined to mandate a specific technological solution but instead, nationwide and non-nationwide CMRS providers may choose to provide a dispatchable location solution or deploy z-axis technology. Thus, small entities have the freedom to choose a solution that best fits their financial situation rather than being subjected to a specific z-axis technology solution, which should minimize the economic impact on these entities.

105. In implementing the z-axis metric, there were several alternatives considered by the Commission but not adopted that may have presented an increased economic impact for small entities. Specifically, the Commission declined to adopt a more stringent z-axis metric or a requirement to convey ''floor level'' information. Small entities will benefit as a result of the certainty provided by the Commission's adoption of 3 meters metric requirement. The Commission also declined to mandate the application of the 3-meters for barometric pressure sensor capable handsets but instead applied the requirement only to z-axis capable devices. This action by the Commission will allow small entities and other CMRS providers to avoid having to retrofit older devices that may not have barometric sensors and avoid incurring the associated costs. Additionally, the Commission declined to adopt a less stringent 5 meter metric, which could increase emergency response time. Lastly, the Commission declined to adopt a specific measurement standard that must be used to report vertical location information and declined to adopt or require proof of performance testing to measure compliance with the z-axis metric.

106. The Commission believes the adoption of the 3 meters metric and allowing CMRS providers the flexibility to choose a compliant technology solution rather than mandating a one size fits all solution is the best approach to meet its public safety and location accuracy objectives and should minimize some economic impact for small entities. The Commission's action also provides CMRS providers a level of certainty which should benefit providers in their selection of a complaint technology solution. In addition, by adopting a single metric, small entities and other CMRS providers should benefit from the economies of scale equipment manufacturers will incur from the ability to provision devices uniformly using 3-meters standard.

107. *Report to Congress.* The Commission will send a copy of the Fifth Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Fifth Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fifth Report and Order, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

108. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public

Safety Act of 1999, Pub. L. 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111–260, 47 U.S.C. 615c, that this Fifth Report and Order, is hereby *adopted.*

109. *It is further ordered* that the amendments of the Commission's rules as set forth in Appendix A of the Fifth Report and Order *are adopted,* effective sixty days from the date of publication in the **Federal Register**. Section 9.10(i)(2)(ii)(C) and (D), (i)(4)(v), and (j)(4) contain new or modified information collection requirements that require OMB review under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Bureau to cause § 9.10(s) to be revised accordingly.

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

111. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Fifth Report and Order, including the Initial and Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 9

Communications Common carriers, Communications equipment, Radio.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 9 as follows:

PART 9—911 REQUIREMENTS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 3 10, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

■ 2. Section 9.10 is amended by revising paragraphs (i)(2)(ii)(C) introductory text and (i)(2)(ii)(D) introductory text, adding paragraph (i)(4)(v), revising paragraph (j)(1) introductory text, adding paragraph (j)(4), and revising paragraph (s) to read as follows:

§ 9.10 911 Service.

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(C) By April 3, 2021: In each of the top 25 cellular market areas (CMAs), nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology in compliance with the following z-axis accuracy metric: Within 3 meters above or below (plus or minus 3 meters) the handset for 80% of wireless E911 calls made from the z-axis capable device. CMRS providers must deliver z-axis information in Height Above Ellipsoid. Where available to the CMRS provider, floor level information must be provided in addition to z-axis location information. CMRS providers that deploy z-axis technology must also comply with the compliance certification and call data reporting requirements of paragraphs (i)(2)(iii) and (i)(3) of this section.

* * * * *

(D) By April 3, 2023: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology in compliance with the following z-axis accuracy metric: Within 3 meters above or below (plus or minus 3 meters) the handset for 80% of wireless E911 calls made from the z-axis capable device. CMRS providers must deliver z-axis information in Height Above Ellipsoid. Where available to the CMRS provider, floor level information must be provided in addition to z-axis location information. CMRS providers that deploy z-axis technology must also comply with the compliance certification and call data reporting requirements of paragraphs (i)(2)(iii) and (i)(3) of this section.

* * * * *

(4) * * *

(v) *Z-axis use certification.* Prior to use of z-axis information to meet the Commission's 911 vertical location accuracy requirements in paragraph (i)(2)(ii) of this section, CMRS providers must certify that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain z-axis information will provide z-axis location information privacy and security protection equivalent to the NEAD.

(j) *Confidence and uncertainty data.* (1) Except as provided in paragraphs (j)(2) through (4) of this section, CMRS providers subject to this section shall provide for all wireless 911 calls, whether from outdoor or indoor locations, x- and y-axis (latitude, longitude) and z-axis (vertical) confidence and uncertainty information (C/U data) on a per-call basis upon the request of a PSAP. The data shall specify:

* * * * *

(4) Upon meeting the timeframes pursuant to paragraphs (i)(2)(ii)(C) and (D) of this section, CMRS providers shall provide with wireless 911 calls that have dispatchable location or z-axis (vertical) information the C/U data required under paragraph (j)(1) of this section. Where available to the CMRS provider, floor level information must be provided with associated C/U data in addition to z-axis location information.

* * * * *

(s) *Compliance date(s).* Paragraphs (i)(2)(ii)(C) and (D), (i)(4)(v), (j)(4), and (q)(10)(v) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (i)(2)(ii)(C) and (D), (i)(4)(v), (j)(4), and (q)(10)(v) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance dates with those paragraphs and revising this paragraph(s) accordingly.

[FR Doc. 2019–28483 Filed 1–15–20; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 11
Thursday, January 16, 2020

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130700–14]

RIN 1545–BM41

Classification of Cloud Transactions and Transactions Involving Digital Content; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations regarding the classification of cloud transactions for purposes of the international provisions of the Internal Revenue Code. These proposed regulations also modify the rules for classifying transactions involving computer programs, including by applying the rules to transfers of digital content.

DATES: The public hearing is being held on Tuesday, February 11, 2020, at 10:00 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, January 31, 2020. If no outlines are received by January 31, 2020, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service 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 a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–130700–14), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–130700–14), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–130700–14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Robert Z. Kelley, (202) 317–6939; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers) or *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–130700–14) that was published in the **Federal Register** on Wednesday, August 14, 2019 (84 FR 40317).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 12, 2019, must also submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Friday, January 31, 2020.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

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

[FR Doc. 2020–00591 Filed 1–15–20; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0595; FRL–10002–68]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (20–1.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that are the subject of premanufacture notices (PMNs). This action would require persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this proposed rule. This action would further require that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice, and EPA has conducted a review of the notice, made an appropriate determination on the notice under TSCA, and has taken any risk management actions as are required as a result of that determination.

DATES: Comments must be received on or before February 18, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0595, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these proposed SNURs would need to certify their compliance with the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after February 18, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is proposing significant new use rules for six chemical substances that are the subjects of PMNs: P–16–291, P–16–486, P–17–184, P–18–232, P–18–236, and P–18–264. These proposed SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

The record for the proposed SNURs on these chemicals was established as docket EPA–HQ–OPPT–2019–0595. That record includes information considered by the Agency in developing these proposed SNURs.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3) and 5(h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the conditions of use of the substances, in

the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen conditions of use as significant new uses.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for six chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the TSCA Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of these proposed rules.

The regulatory text section of these proposed rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs are undergoing premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is proposing to designate these reasonably foreseen and other potential conditions of use as significant new uses. As a result, those conditions of use are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

The substances subject to these proposed rules are as follows:

PMN Number: P–16–291.

Chemical name: 1,3-Cyclohexanedimethanamine adduct (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a curing agent. Based on the physical/chemical properties of the PMN substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for irritation and corrosion to all tissues, skin sensitization, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use in a consumer product; and
2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 74 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin and eye irritation, skin sensitization, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11447.

PMN Number: P–16–486.

Chemical name: Polychloropropane (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a site-limited intermediate in the production of a refrigerant precursor. Based on the physical/chemical properties of the PMN substance, test data for the PMN substance, and SAR analysis of test data on analogous substances, EPA has identified concerns for reproductive effects and developmental toxicity, effects on the liver, kidney and nasal turbinates, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use other than as a site-limited chemical intermediate;
2. Manufacture, processing, or use other than in an enclosed process;
3. Use of sampling methods other than the ''zero-contact'' methods described in the PMN; and
4. Disposal other than by incineration.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption, distribution, metabolism, and elimination (ADME), DNA binding, and chronic aquatic toxicity studies would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11448.

PMN Number: P–17–184.

Chemical name: 1-Propanaminium, 2-hydroxy-N, N-dimethyl-N-[3-[(1-oxooctyl)amino]propyl]-3-sulfo-, inner salt.

CAS number: 1612795–77–3.

Basis for action: The PMN states that the use of the substance will be in firefighting foams; industrial all-purpose cleaners; transportation washes; and personal care product uses not regulated under TSCA. Based on the physical/chemical properties of the PMN substance, test data for the PMN substance, and SAR analysis of test data on analogous substances, EPA has identified concerns for irritation to skin and mucous membranes; systemic effects; developmental effects; and lung effects if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use other than in firefighting foams, industrial all-purpose cleaners, and transportation washes;
2. Processing to greater than 10% by weight in the final formulated products; and
3. Use without a NIOSH-certified respirator with an APF of at least 1000, where there is a potential for inhalation exposures.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11449.

PMN Number: P–18–232.

Chemical name: Polyol, reaction products with formaldehyde and methanol (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as hydrogen sulfide scavenger in oil and gas applications. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on the PMN substance and analogous substances, EPA has identified concerns for irritation, sensitization, mutagenicity, carcinogenicity, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing, or use in a manner that results in inhalation exposure; and

2. Manufacture (including import) beyond the confidential annual production volume described in the PMN.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of toxicokinetics, skin and eye irritation, skin sensitization, neurotoxicity, reproductive effects, developmental toxicity, specific target organ toxicity, cancer and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11450.

PMN Number: P–18–236.

Chemical name: Metal, alkenoic acid-alkyl alkenoate-alkyl substituted alkenoate polymer carbopolycycle complexes (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a paint additive. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for respiratory and skin sensitization, reproductive toxicity, specific target organ toxicity and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing, or use in a manner that results in inhalation exposure;

2. Use for other than the confidential use described in the PMN; and

3. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 50 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11451.

PMN Number: P–18–264.

Chemical name: Phosphonomethylated ether diamine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for eye irritation, chelation effects, reproductive toxicity, and developmental toxicity, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

- Manufacture, processing, or use in a manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' this condition of use.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of eye irritation, reproductive toxicity, specific target organ toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11452.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV, EPA identified certain other reasonably foreseen conditions of use, in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is proposing to designate these conditions of use as significant new uses to ensure that they are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is proposing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant

new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under section 5(a)(3) (A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VI. Applicability of the Proposed Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule were undergoing premanufacture review at the time of signature of this proposed rule and were not on the TSCA Inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these proposed SNURs, EPA concludes that the proposed significant new uses are not ongoing.

EPA designates December 2, 2019 (date of web posting) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed.

In developing this proposed rule, EPA has recognized that, given EPA's general practice of posting proposed rules on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before **Federal Register** publication of the proposed rule.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0595.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This proposed rule would establish SNURs for 8 new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA, 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018, only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this proposed rule. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11447 through 721.11452 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11447 1,3-Cyclohexanedimethanamine adduct (generic).

721.11448 Polychloropropane (generic).

721.11449 1-Propanaminium, 2-hydroxy-N, N-dimethyl-N-[3-[(1-oxooctyl)amino]propyl]-3-sulfo-, inner salt.

721.11450 Polyol, reaction products with formaldehyde and methanol (generic).

721.11451 Metal, alkenoic acid-alkyl alkenoate-alkyl substituted alkenoate polymer carbopolycycle complexes (generic).

721.11452 Phosphonomethylated ether diamine (generic).

* * * * *

§ 721.11447 1,3-Cyclohexanedimethanamine adduct (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 1,3-cyclohexanedimethanamine adduct (PMN P–16–291) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=74.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11448 Polychloropropane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polychloropropane (PMN P–16–486) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (b), (c), and (h). It is a significant new use to use sampling methods other than the ''zero-contact'' methods described in the PMN.

(ii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) (i), and (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11449 1-Propanaminium, 2-hydroxy-N, N-dimethyl-N-[3-[(1-oxooctyl)amino]propyl]-3-sulfo-, inner salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 1-Propanaminium, 2-hydroxy-N, N-dimethyl-N-[3-[(1-oxooctyl-amino]propyl]-3-sulfo-, inner salt (PMN P–17–184; CASRN 1612795–77–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) and (5), (b)(concentration set at 1.0%) and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use the substance for use other than firefighting foams, industrial all-purpose cleaners, and transportation washes. It is a significant new use to process the substance to greater than 10% by weight in the final formulated products.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11450 Polyol, reaction products with formaldehyde and methanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyol, reaction products with formaldehyde and methanol (PMN P–18–232) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, processing or use of the substance in a manner that results in inhalation exposure. It is a significant new use to manufacture the substance at greater than the confidential annual production volume described in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11451 Metal, alkenoic acid-alkyl alkenoate-alkyl substituted alkenoate polymer carbopolycycle complexes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as metal, alkenoic acid-alkyl alkenoate-alkyl substituted alkenoate polymer carbopolycycle complexes (PMN P–18–236) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture, processing or

use of the PMN substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=50.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11452 Phosphonomethylated ether diamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphonomethylated ether diamine (PMN P–18–264) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, processing or use of the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2019–26292 Filed 1–15–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; FCC 19–124; FRS 16359]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) proposes rules to improve E911 wireless location accuracy. The Fifth Further Notice of Proposed Rulemaking (FNPRM) seeks comment on adopting a timeline narrowing the z-axis (vertical) location accuracy metric, and requiring Commercial Mobile Radio Service (CMRS) Providers to deliver floor level information to Public Safety Answering Points (PSAPs) in conjunction with a wireless indoor 911 call. The FNPRM also seeks comment on alternative methods for carriers to demonstrate z-axis technology deployment, and comment on expanding dispatchable location solutions. The intended effect of this FNPRM is to address long term public safety requirements in the Commission's indoor location framework, while balancing technological neutrality and flexibility.

DATES: Comments are due on or before February 18, 2020, and reply comments are due on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by PS Docket No. 07–114, by any of the following methods:

- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Nellie Foosaner, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2925, *Nellie.Foosaner@fcc.gov;* or Alex Espinoza, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0849, *Alex.Espinoza@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Further Notice of Proposed Rulemaking (FNPRM) in PS Docket No. 07–114, adopted November 22, 2019, and released November 25, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554.

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998), *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within 2 business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte

presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Synopsis

1. Given the likelihood that vertical location technology will continue to improve, we seek comment on whether to establish a long-term timeline for migrating to a more stringent z-axis metric than 3 meters, and ultimately whether to require CMRS providers carriers to deliver floor level information in conjunction with wireless indoor 911 calls. We also propose to amend the rules to expand on the current options for demonstrating deployment of z-axis or dispatchable location capability.

Continuing To Improve the Z-Axis Metric

2. We seek comment on what additional steps we can take to facilitate our long-term location accuracy objectives. Public safety commenters that support the 3-meter standard in the short term also support taking additional steps to achieve floor level accuracy over the longer term. For example, the International Association of Fire Chiefs recommends narrowing the 3-meter metric over a five-year timeline. Commenters note that vertical location technology solutions will continue to improve, thus making application of a narrower metric more feasible over time.

3. We seek comment on the feasibility of phasing in more granular z-axis requirements over time, consistent with the approach that has worked well to date for horizontal location accuracy and allowed valuable vertical location technologies to evolve. We seek comment on whether it would be technologically feasible to achieve a 2 meter metric and if so, over what time frame. For example, should we adopt a phased five-year timeline for migrating from the 3-meter metric towards a 2-meter metric? As part of that phased-in approach should we require nationwide CMRS providers to meet a 2-meter metric within four years and non-nationwide CMRS providers to comply in the fifth year? Is a 1-meter metric feasible over the longer term?

4. Are there other alternatives we should consider for a narrower vertical location accuracy metric? Should we maintain the same requirements as in the current rules for applying future metrics to handsets (80% of wireless E911 calls from z-axis capable handsets) and for providing C/U data (based on a 90% confidence threshold)? Commenters advocating other alternatives and/or a mix of the options described here should explain the technical feasibility, benefits, and costs of their preferred approach(es).

5. To continue to improve the z-axis metric, we seek comment on whether enhancements are needed to the vertical location accuracy testing process. For example, APCO states that ''[t]he Commission should require carriers to take additional steps to verify that real-world performance is consistent with test bed evaluation of z-axis technology,'' and asserts that the Commission should require more comprehensive testing of devices and testing unique public safety use cases. Should we require testing to include specific first responder scenarios? How does z-axis technology work during power outages? We also seek comment on the impact of power outages on horizontal location accuracy and address-based dispatchable location technologies, such as the NEAD. Should power outage scenarios be included in a z-axis technology test bed? APCO also raises concerns about first responders trying to ''match'' a 911 caller's altitude when the first responders are using one technology vendor and the caller's device uses another. Should we require testing protocols to ensure that the ''use of different solutions does not produce additional error that exceeds the +/- 3 accuracy baseline''? We seek comments on APCO's proposals and other improvements to vertical location accuracy testing.

6. Some representatives of public safety officials argue that they would benefit from actual floor level information. Given the lack of current mechanisms that are consistently and reliably capable of converting z-axis information to a floor level, we seek additional information on efforts to convert z-axis data to precise floor level. What resources are available today for public safety entities and CMRS providers to convert z-axis information into floor-level information? Are there any local or regional tools currently available that could be scaled nationally? What tools and resources are being developed, and on what time horizon? Is there an appropriate timeline for converting z-axis information (as required to be reported above) to floor level information, taking into account the time needed to achieve technical feasibility and the relative costs of doing so? What are some of the technological challenges to delivering floor level and how can we overcome these challenges? BRETSA states that floor heights are not standard and other commenters note that an authoritative database for the mapping of floors in multi-story buildings does not exist. Are there initiatives under way to develop resources for mapping building heights and floor numbers? What are the costs to carriers and public safety to develop database solutions that can be used to convert altitude measurements to an actual floor-level?

7. One possible technological solution to providing floor or unit number data uses Wi-Fi, Bluetooth, and other wireless signals to query privately-maintained databases linking those signals to the location data. Our record indicates that significant technical and implementation challenges remain with this approach. For example, there may be lower densities of Wi-Fi and Bluetooth access points in lower-income communities. Privately-maintained reference point databases also do not provide outdoor coverage (such as in national parks), may be moved or discarded, and may not work at all during power outages. We seek to maintain technological neutrality in our z-axis requirements, and we do not want to inhibit the development of technological solutions that will provide the most accurate location data and, ultimately, save lives. At the same time, we encourage commenters to assess the reliability of their proposed

technological solutions in foreseeable emergency circumstances and how that should affect any future changes to our location data requirements.

8. Google proposes that the Commission include an option that allows carriers to provide floor level estimates instead of HAE-based 3-meter z-axis measurements. We seek comment on Google's proposal to allow provision of floor level information without provision of HAE. What are the drawbacks of delivering vertical location information without HAE?

9. Some public safety commenters encourage us to require CMRS providers to report floor-level, rather than simply z-axis information, or dispatchable location and z-axis information. If we were to do so, would a 5, 7, or 10-year timeline be sufficient to achieve floor level accuracy? What interim deadlines should the Commission impose and what other actions should the Commission take in order to ensure that CMRS providers can provide floor level information and/or multiple data points? If CMRS providers meet such a timeline, will PSAPs be ready within the same timeframe to accept floor level information? What should the testing and development process look like?

10. We seek comment on whether to require provision of confidence and uncertainty data with floor level information. We also seek comment on the costs and benefits associated with a requirement to provide floor level in comparison to the costs and benefits of providing z-axis information. In the Fifth Report and Order we determine that our location accuracy rules, including the 3-meter z-axis metric, would improve emergency response times, which, in turn, would improve patient outcomes and save lives. Expected benefits far exceed that temporary cost amount which lasts only for a few years. The benefit floor from enhanced horizontal and vertical accuracy for wireless phones adopted in the Fifth Report and Order is expected to account for a large part of $97 billion. Are there alternatives beyond a five-year timeline that we should consider for implementing a floor-level accuracy metric? Commenters advocating a different approach should explain the technical feasibility, benefits, and costs of their preferred approach(es).

Alternative Options for Z-Axis Deployment

11. In each CMA where CMRS providers use z-axis technology to comply with vertical location requirements, the current rules require that CMRS providers deploy z-axis technology to cover 80% of the CMA population. We seek comment on whether expanding options beyond the population-based CMA coverage requirement would serve the public interest.

12. Urban and Dense Urban Morphologies. Verizon states that deploying the network-level components of z-axis solutions should focus on urban and dense urban areas where multi-story buildings are concentrated. Verizon reasons that ''[t]he Commission's public safety objectives would not be served if deployment of the capability in a suburban area helps achieve the 80 percent coverage benchmark, but the result is that Z-axis coverage is provided for single-story residential dwellings, rather than the multi-story buildings where those residents work (but do not live).'' NextNav argues that focusing deployment on buildings above three stories would reduce costs and increase benefits because such deployment rules ''would permit location service providers to focus deployment of their weather calibration reference points where they are most needed to achieve the mission (and correspondingly, to avoid deployment in areas where they do not add significant value).'' Precision Broadband proposes mandating the provision of both dispatchable location and a z-axis location metric for 911 calls originating from ''multi-story'' buildings.

13. Some commenters recommend refining the per-CMA requirement in the rules to measure deployment based on coverage of 80% of the buildings that exceed three stories in each of the top 50 CMAs, rather than based on covering 80% of the population. If afforded the option to focus z-axis deployment in dense and dense urban morphologies and buildings above three stories, how would CMRS providers document their deployment? Should the information be provided to the PSAPs so they know which areas and buildings are covered? Should the same information be provided to the public? Would NextNav and Verizon's proposal reduce compliance costs while preserving or increasing the benefits of the z-axis backstop? Would deployment criteria focused on urban and dense urban morphologies as opposed to population coverage promote deployment of handset-based solutions? Should the Commission mandate the provision of both dispatchable location and vertical location data for 911 calls originating from multi-story buildings?

14. Handset Deployment. The two z-axis solutions that have already been tested in the test bed (NextNav and Polaris) are handset-based, *i.e.,* the location determination is calculated in the handset, rather than at an external point within a network. Google also supports focusing on handset-based solutions because such solutions have the advantage that they can be deployed on a nationwide basis so that all wireless users have access to them. Accordingly, we seek comment on establishing an option for CMRS providers to deploy z-axis capable handsets nationwide as a means of complying with our z-axis deployment requirements. What are the benefits and costs associated with handset-based z-axis deployment? Would a handset deployment option facilitate more rapid and widespread availability of nationwide z-axis solutions deployment than other options? Is a handset-based approach more-cost effective than a network-based approach? How do the costs change between deploying in the top 50 CMAs and nationwide? Can deployment nationwide be handled approaches that would require additions or modifications to network at the handset level rather than incurring infrastructure costs? We additionally seek comment on the costs and benefits of both deploying z-axis capable handsets in the top 50 CMAs and deploying them nationwide. We seek data on how likely consumers carrying z-axis capable handsets may travel in and out of one of the top 50 CMAs. What do carriers or other industry actors estimate the cost per handset is? Will a nationwide implementation of the instant rules reduce costs per handset? Can deployment nationwide be handled at the handset level rather than incurring infrastructure costs? We seek comment on how a nationwide deployment would impact compliance costs.

15. We also recognize that ensuring meaningful deployment of handset-based solutions requires z-axis capable devices to be widely available to consumers. How should we measure such deployment? Would it be sufficient for CMRS providers to show that they have made a certain percentage of the handset models that they market to customers z-axis capable? If so, what should that percentage be, and should we specify additional criteria to ensure that providers offer a reasonable selection of low-end handset models as well as higher-end models that have z-axis capability? What steps could we take to increase the number of older devices and lifeline phones that are z-axis capable? Alternatively, should we require CMRS providers to demonstrate actual market penetration of z-axis capable handsets, and if so, what

penetration level would be sufficient? Should we take handset churn rates into account in setting penetration thresholds, or should we require providers to achieve specified penetration levels regardless of churn, as we did in implementing our Phase II rules?

16. Google suggests adopting an approach analogous to that in the European Electronics Communication Code (EECC). Google states that ''[b]y December 2020, all European Union member states will be required to use handset-derived location in addition to network-based information for response to emergency calls.'' By March 17, 2022, ''the EECC will require that all smartphones sold in the European Single Market be able to provide handset-based location data.'' We seek comment on Google's suggestion that we adopt an approach similar to the EECC. Should we consider this or other international initiatives as we seek to encourage the development and deployment of improved z-axis solutions in the U.S.? What are the costs and benefits of such an approach?

17. Non-Nationwide CMRS Providers. As we consider future z-axis requirements for E911 location accuracy nationwide, CCA urges the Commission ''to implement a glide path for non-nationwide carriers to comply with any adopted timeframes, particularly if these carriers operate outside of the FNPRM's proposed benchmark of the top 50 markets.'' APCO notes that ''existing benchmarks in 2022 and 2024 for non-nationwide carriers could be adjusted consistent with [its] suggested revisions for 2021 and 2023.'' We seek comment on an appropriate timeline for affording new z-axis deployment options to non-nationwide CMRS providers. Non-nationwide CMRS providers already have an additional year to comply with CMA-based deployment metrics under our current rules. If we adopt other deployment options based on building type or nationwide deployment of handset-based z-axis solutions, would the extra year already afforded to non-nationwide providers be sufficient to enable them to take advantage of these options?

18. We also seek comment on costs and benefits associated with top 50 CMA and a possible nationwide deployment of z-axis technology, which would effectively result in a nationwide x, y and z location accuracy standard. How do the costs or benefits change between deploying in the top 50 CMAs and nationwide? Does a phased implementation approach change these costs and benefits? In order to reduce the infrastructure costs associated with vertical location, NextNav suggests that the Commission ''consider revising its existing requirements regarding the geographic locations where z-axis services must be provided.'' NextNav argues that ''[i]t is unclear . . . whether accurate vertical location information is urgently needed in every portion of the top CMAs, particularly in suburban and rural areas with a large preponderance of one and two story residences,'' and as such, one way to reduce cost would be to require compliance based on ''coverage of 80 percent of the buildings that exceed three stories in each of the top 50 CMAs, rather than based on the residential locations of 80 percent of the population.'' Would such a proposal, for example, minimize carrier compliance costs while directing z-axis coverage to the areas that need it most? We seek comment on this proposal and solicit comments on any other methods to reduce costs while increasing benefits, especially if the Commission opts to implement these rules nationwide.

Dispatchable Location and Alternatives to the NEAD

19. In each CMA where dispatchable location is used, our rules require nationwide CMRS providers to ''ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population.'' This requirement precludes carriers from implementing dispatchable location solutions that rely on data sources other than the NEAD, even where such solutions might be more viable and cost-effective. Accordingly, we propose to allow CMRS providers to demonstrate dispatchable location deployment by means other than NEAD reference points. We seek comment on this proposal. As NextNav suggests, we also seek comment on ''any procedures that would quantify and verify these improvements, such as requiring the use of address-based (DL) accuracy testing and reporting requirements (including confidence and uncertainty reporting) to ensure that any changes to the NEAD or other address-based DL technologies actually succeed in improving wireless location accuracy to support public safety.'' How do we account for uncertainty in dispatchable location data? Should we extend C/U requirements to alternative methods of delivery dispatchable location? If, so what should be the required C/U percentage?

20. We recognize the importance to public safety of obtaining dispatchable location information regarding which ''door to kick in.'' However, the record indicates that the NEAD faces challenges that could slow down implementation of dispatchable location. Meanwhile, alternatives to the NEAD are emerging that could support dispatchable location. As APCO puts it, ''dispatchable location can be provided without the NEAD'' and use of the NEAD to provide a caller's location does not necessarily mean a ''dispatchable location has been provided.'' The Texas 9–1–1 Entities point to location solutions such as Apple's HELO, Google's Android ELS, and West Public Safety's proximity check. Texas 9–1–1 Entities state that ''[t]o the extent additional issues regarding the NEAD or alternative dispatchable location solutions can be further clarified early in the development process, any such clarifications may enhance the development process.'' Precision Broadband explains that it will soon propose a fixed broadband alternative dispatchable location solution—independent of the NEAD—which relies on internet service provider interfaces to provide dispatchable location.

21. Our proposal to expand the range of possible dispatchable location solutions for CMRS providers is also consistent with the approach to dispatchable location that we recently adopted for non-CMRS providers in the Kari's Law and RAY BAUM's Act proceeding. In that proceeding, we sought comment on whether database location solutions, including the NEAD, could potentially assist non-CMRS providers in determining the ''dispatchable location of MLTS end users.'' Commenters in that proceeding generally expressed skepticism that the NEAD has any near-term utility for MLTS location, but commenters suggested that dispatchable location may be achievable if carriers can leverage other data sources, such as third-party databases or crowd-sourced location data. To address concerns about relying on database location solutions, the Commission adopted a more flexible approach to providing dispatchable location for non-CMRS providers. In this proceeding, we expect CMRS providers to continue pursuing dispatchable location alternatives, even if they choose not to pursue the NEAD.

22. Because the Commission has applied specific privacy and security safeguards to the NEAD, we propose that any dispatchable location alternative used by CMRS providers should include equivalent safeguards. We seek comment on this tentative conclusion. What are the costs and benefits of employing alternative information sources, either to supplement or replace the NEAD? How reliable are third-party and crowd-

sourced location data alternatives? Are there other alternative information sources that we should consider? Should, for example, the Commission consider fixed broadband location data as a NEAD information source? What are the relative costs and benefits of applying NEAD-type security and privacy protections to alternative information sources? How would such sources meet the validation criteria in the definition of dispatchable location applicable to CMRS providers?

23. We also seek comment on the possible costs and benefits associated with dispatchable location alternatives to the NEAD. For example, what are the costs and benefits associated with Precision Broadband's multi-faceted proposal to require the reporting of both (1) dispatchable location and (2) z-axis information in the top 50 Cellular Market Areas. What are the associated costs and benefits of relying on alternative data sources for dispatchable location. What are the costs and benefits of alternative methods for delivering dispatchable location?

I. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Fifth Further Notice of Proposed Rule Making (Fifth Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines in this Fifth Further Notice. The Commission will send a copy of the Fifth Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Fifth Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

2. In the Fifth Further Notice, we propose changes to, and seek comment on, our E911 location accuracy rules to expand options for z-axis deployment and provisioning of dispatchable location, in order to address long term public safety requirements in the Commission's indoor location framework, while balancing technological neutrality and flexibility. More specifically, we seek comment on a timeline for narrowing the z-axis metric and requiring carriers to deliver floor level information to Public Safety Answering Points (PSAPs) in conjunction with a wireless indoor 911 call. We inquire whether a five-year timeline is sufficient to achieve floor level accuracy, and, if so, what actions should the Commission take in order to ensure that CMRS providers can provide floor level information. For z-axis deployment, we seek comment on providing alternative ways for carriers to demonstrate that they have deployed z-axis technology, such as deploying z-axis capable handsets nationwide. With respect to dispatchable location, the Commission seeks comment on expanding dispatchable location solutions, provided that any new sources of dispatchable locations would be subject to privacy and security protection equivalent to those in effect for the National Emergency Address Database (NEAD).

Legal Basis

3. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c.

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

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

5. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

6. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

7. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

1. Telecommunications Service Providers

a. Wireless Telecommunications Providers

8. Pursuant to 47 CFR 9.10(a), the Commission's 911 service requirements are only applicable to Commercial Mobile Radio Service (CMRS) ''[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These

requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.''

9. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

10. All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

11. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

12. Competitive Local Exchange Carriers (Competitive LECs). Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

13. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

14. Narrowband Personal Communications Services. Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

15. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. U.S. Census Bureau data in this industry for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus, under this SBA category and the associated small business size standard, the majority of Offshore Radiotelephone Service firms can be considered small. There are presently approximately 55 licensees in this service. However, the Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite).

16. Radio and Television Broadcasting and Wireless Communications

Equipment Manufacturing. This‘‘’’ industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

17. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

18. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ‘‘small business’’ for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ‘‘very small business’’ as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission’s auction for geographic area licenses in the WCS there were seven winning bidders that qualified as ‘‘very small business’’ entities, and one that qualified as a ‘‘small business’’ entity.

19. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

20. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

21. 700 MHz Guard Band Licensees. In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ‘‘small businesses’’ and ‘‘very small businesses’’ for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

22. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ‘‘small business’’ as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ‘‘very small business’’ is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—‘‘entrepreneur’’—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.

Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

23. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order. An auction of 700 MHz licenses commenced January 24, 2008, and closed on March 18, 2008, which included: 176 Economic Area licenses in the A-Block, 734 Cellular Market Area licenses in the B-Block, and 176 EA licenses in the E-Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

24. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

25. Wireless Resellers. The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for wireless resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Wireless Resellers are small entities.

b. Equipment Manufacturers

26. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry can be considered small.

27. Semiconductor and Related Device Manufacturing. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 862 establishments that operated that year. Of this total, 843 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

28. The Fifth Further Notice proposes and seeks comment on E911 location accuracy rule changes that may affect reporting, recordkeeping, and other compliance requirements for small entities. In particular, the Fifth Further Notice seeks comment on: (1) Timelines for requiring carriers to provide floor-level emergency caller information (whether 5 years or an alternative number) to Public Safety Access Points (PSAP); (2) focusing z-axis technology deployment on building size vs. population coverage, and; (3) use of alternative information—third party and crowd sourced information—to provide dispatchable location.

29. The proposed rules in the Fifth Further Notice if adopted may require small entities to hire engineers, consultants, or other professionals for compliance. The Commission cannot however, quantify the cost of compliance with the potential rule changes and obligations that may result in this proceeding. In our discussion of the proposals in the Fifth Further Notice we have sought comments from the parties in the proceeding, including cost and benefit analyses, and expect the information we received in the comments to help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result from the matters raised in the Fifth Further Notice.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

31. The Commission determined in the Fifth Report and Order that benefit

floor from the enhanced horizontal and vertical location accuracy requirements adopted for wireless phones is expected to be $97 billion and far exceeds its costs. In the Fifth Further Notice the Commission continues to refine its indoor location accuracy framework to meet long term public safety objectives and seeks comment on a variety of proposals to best implement its objectives, while ensuring information privacy and security. While doing so, the Commission is mindful that small entities and other CMRS providers will incur costs should the proposals we make, and the alternatives upon which we seek comment in the Fifth Further Notice, be adopted. We believe however that the economic costs of compliance for small entities will be reduced by some of the steps we have taken in the Fifth Further Notice such as our proposals, (1) to expand options for the z-axis deployment, (2) to expand options for the dispatchable location portion of our rules, provided that any new sources of dispatchable locations would be subject to privacy and security protection equivalent to those in currently in effect.

32. To assist in the Commission's evaluation of the economic impact on small entities and other CMRS providers, the Commission seeks comment on the costs and benefits of various proposals and alternatives in the Fifth Further Notice and specifically on how to reduce compliance costs and increase benefits.

33. In particular, the Commission seeks comment on the costs and benefits of narrowing the z-axis metric from 3 meters to 1 meter and information on the costs to carriers and public safety to develop database solutions that can be used to convert altitude measurements to an actual floor-level. The Commission also seeks comment on the costs and benefits as applied to a nationwide deployment of the z-axis metric, resulting in a nationwide x, y and z location accuracy standard and associated with a phased-in, nationwide deployment of the z-axis metric; and on how a nationwide deployment would impact compliance costs. Further, the Commission seeks comment on alternatives to the NEAD including the costs and benefits of requiring the reporting of both (1) dispatchable location and (2) z-axis information in the top 50 Cellular Market Areas, and the associated costs and benefits of relying on alternative data sources for dispatchable location.

34. Aside from the costs and benefits information in the Fifth Further Notice, the Commission seeks comment on the appropriate timeline for requiring carriers to provide floor level information—or more granular requirements—and considers a five-year timeline for doing so. In the alternative, the Commission seeks comment on whether other timelines would better account for the time needed to achieve technical feasibility and the associated costs for the provision of floor level information rather than meeting the 3-meter vertical location accuracy standard. To help secure E911 location information, the Fifth Further Notice also seeks comment on whether alternative sources of caller location information would best help provide timely and accurate dispatchable location information, and queries whether such information can be secured by applying security and privacy requirements similar to those of the NEAD.

35. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the Fifth Further Notice, including costs and benefits analyses. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

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

36. None.

II. Ordering Clauses

37. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, that this Fifth Report and Order and Further Notice of Proposed Rulemaking, is hereby *adopted.*

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

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio, Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 9 as follows:

PART 9—911 REQUIREMENTS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151 through 154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

■ 2. Section 9.10 is amended by revising paragraphs (i)(2)(ii)(C)(*1*) and (*2*) and (i)(2)(ii)(D)(*1*) and (*2*) to read as follows:

§ 9.10 911 Service Requirements.

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(C) * * *

(*1*) In each CMA where dispatchable location is used: Nationwide CMRS providers ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population. CMRS providers may demonstrate dispatchable location deployment by means other than the NEAD reference points, provided that any dispatchable location option that does not rely on the NEAD includes equivalent privacy and security safeguards; or

(*2*) In each CMA where z-axis technology is used:

(*i*) Nationwide CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population; or

(*ii*) CMRS providers may also demonstrate z-axis deployment to cover 80 percent of the buildings that exceed three stories in the CMA; or

(*iii*) CMRS providers may also demonstrate z-axis deployment by deploying z-axis capable handsets nationwide. By 2021, CMRS providers choosing nationwide deployment shall ensure that 80 percent of handsets on the network are z-axis capable.

(D) * * *

(*1*) In each CMA where dispatchable location is used: Nationwide CMRS providers ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population. CMRS providers may demonstrate dispatchable location deployment by means other than the NEAD reference points, provided that any dispatchable location option that does not rely on the NEAD includes equivalent privacy and security safeguards; or

(*2*) In each CMA where z-axis technology is used:

(*i*) Nationwide CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population; or

(*ii*) CMRS providers may also demonstrate z-axis deployment to cover 80 percent of the buildings that exceed three stories in the CMA; or

(*iii*) CMRS providers may also demonstrate z-axis deployment by deploying z-axis capable handsets nationwide. By 2023, CMRS providers choosing nationwide deployment shall ensure that 100 percent of handsets on the network are z-axis capable.

* * * * *

[FR Doc. 2019–28482 Filed 1–15–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 11
Thursday, January 16, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–19–0071; SC19–990–5]

Privacy Act of 1974: New System of Records

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Agricultural Marketing Service (AMS) proposes to add a system of records to its inventory of records systems. The system of records will cover information collected under the U.S. Domestic Hemp Production Program in AMS. This notice is necessary to meet the Privacy Act requirement that a **Federal Register** notice describing the existence and character of record systems to be maintained by the agency be published.

DATES: This system of records notice is applicable upon its publication in this issue of the **Federal Register**, with the exception of the new routine uses, which are effective February 18, 2020. AMS will accept comments until February 18, 2020 on the routine uses described below.

ADDRESSES: Interested persons are invited to submit written comments. Comments should be submitted via the Federal eRulemaking portal at *www.regulations.gov.* Comments may also be filed with the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or Fax: (202) 720–8938. All comments received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact William Richmond, Specialty Crops Program, AMS, USDA; 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–9921; Email: *william.richmond@usda.gov.* For Privacy Act questions concerning this system of records notice, please contact the FOIA and Privacy Act Officer, 1400 Independence Ave. SW, Washington, DC 20250; Telephone: (202) 205–0288; Email: *ams.foia@usda.gov.* For USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250; Email: *USDAPrivacy@ocio.usda.gov.*

SUPPLEMENTARY INFORMATION: The Agriculture Improvement Act of 2018 (the Farm Bill) mandates USDA to establish a U.S. Domestic Hemp Production Program (DHPP). The new program will be administered by the Agricultural Marketing Service (AMS), Specialty Crops Program (SCP), Marketing Order and Agreement Division (MOAD). The new program will review plans submitted by States and Tribal Nations to regulate the production of hemp within their jurisdictions and approve those plans that meet requirements. These plans must include protocols for how producers will submit information on the land where hemp is produced, testing procedures for the plants, and the disposition of plants that do not meet requirements. In States and Tribal Nations where the State or Tribal Nation does not have an approved plan (and that does not prohibit the production of hemp), the program will issue licenses to individuals and businesses who wish to produce and will also oversee program participant compliance.

In support of these requirements, AMS is establishing a new system of records for the DHPP under the Privacy Act (5 U.S.C. 552a). As part of this program, the Farm Bill requires USDA to collect data from States and Tribal Nations regarding hemp growers under their jurisdiction as well as licensing information on growers operating under the USDA hemp production plan. Additionally, the Farm Bill requires USDA to share the collected information with the Attorney General and share real-time information with Federal, State, local or Tribal law enforcement.

This system will provide a secure public facing interface where applicants (both individuals and businesses) can submit their licensing information. This system will also provide a secure interface where States and Tribes may submit their plans for USDA approval, their licensee information, land identification information, monthly reports on the disposal of non-conforming plants and materials, and annual reports.

This system will interface with the USDA Farm Service Agency to enter and receive information from licensees which will include: Field acreage, greenhouse or indoor square footage of hemp planted; street address; geospatial location or other comparable identification method which specifies where the hemp will be produced; and legal description of the land.

Additionally, this system will provide real time reporting of relevant data to other internal and external agencies (Farm Service Agency, Department of Justice (Drug Enforcement Administration) and State and Tribal law enforcement).

AMS will use the information obtained only for the purposes of administering the laws and regulations of the DHPP, including using this data for regulatory enforcement actions brought in USDA administrative proceedings and/or Federal courts and preparing and releasing summary and statistical reports on agricultural commodities and related products. Any further dissemination not expressly identified here will not occur without the express written permission from the DHPP. The information will be reviewed only by authorized USDA personnel or others as identified in this document on a rolling and a need-to-know basis and will be kept secure. USDA will maintain such confidential information as required under the specific statutes and government policies relating to confidential information, as laid out below.

Establishing a new DHPP system of records under the Privacy Act (5 U.S.C. 552a) is required by law. The privacy rules for collecting and handling

individuals' information, and for securely managing records, are followed.

A report on the new system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A–108, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Done in Washington, DC, this 13th day of January 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

SYSTEM NAME AND NUMBER

Domestic Hemp Production Program, USDA/AMS–07

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records will be maintained at the offices of the USDA, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0244.

SYSTEM MANAGER:

A System Manager will manage the Domestic Hemp Production Program system. For general information, you may contact the 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,

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Agriculture Improvement Act of 2018 (Farm Bill) and 7 CFR part 990.

PURPOSE:

The purpose of this system is to collect data from States and Tribal Nations regarding hemp producers licensed under their USDA-approved plan within their jurisdiction, as well as information on producers operating under the USDA plan. Additionally, the Farm Bill requires USDA to share the collected information and data with Federal, State, Tribal, and local law enforcement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) Producers and business entity applicants for hemp production licenses under a USDA-approved State or Tribal plan, or under the USDA hemp production plan; (2) licensed producers or business entities under a USDA-approved State or Tribal plan, or under the USDA hemp production plan; (3) individuals tasked with oversight and administration of the USDA Domestic Hemp Production Program, including: USDA employees, contractors, or other entities working on behalf of the USDA; (4) individuals who are regulated by the USDA Domestic Hemp Production Program who may be investigated for possible violations, including licensees, samplers, inspectors, and laboratory technicians, including their agents and appointees, and other non-Federal employees; and (5) any other individuals involved in a review or investigation as an alleged violator.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will provide a secure public facing interface where applicants, States and Tribes may submit information to USDA. This system will interface with the USDA FSA to enter and receive information from. Additionally, this system will provide real time reporting of relevant data to other internal and external agencies pertaining to an alleged violation of the Domestic Hemp Production Program, including: Name, address information (street or email address), personal identification numbers (employer identification number [EIN], system-generated license number), criminal history, and case file information for producers under a State, Tribal plan, or the USDA production plan. The case file contains evidence gathered in the course of the review or investigations. The system will contain the following records:

- Records relating to hemp production license applications or renewals:
  - State and Tribal Nation production plans;
  - Applicant, business entity or licensee name;
  - Names and titles of a business entity's key participants (if applicable);
  - Mailing or principal business address;
  - Email address (if applicable);
  - Phone number;
  - Employer Identification Number (if applicable);
  - Criminal history report;
  - Name of USDA-approved plan under which licensed or applying for license;
  - License or authorization number (if applicable);
  - License or authorization status;
  - Date license was issued and will expire;
  - Name of legal owner of land for hemp production; and
  - Signature or affidavit of applicant or licensee (USDA plan only).
- Records relating to compliance including, but not limited to:
  - Laboratory hemp lot test reports, including:
  - Name of licensee or authorized person;
  - Licensee or authorized person address;
  - Name of USDA-approved plan under which licensed;
  - License number or authorization identifier;
  - License or authorization type (producer or business entity);
  - Lot number;
  - Date and time of test;
  - Percentage delta-9 tetrahydrocannabinol concentration; and
  - Test result (retest, pass, fail).
  - Hemp lot disposal reports, including:
  - Licensee or authorized person name;
  - License or authorization number;
  - Licensee or authorized person address;
  - Name of USDA-approved plan under which licensed;
  - Lot number;
  - Lot location (Greenhouse, indoor or field production);
  - Geospatial location or other valid land descriptor;
  - Date of completion of disposal;
  - Total acreage disposed;
  - Name of Disposition Agent;
  - Name of Disposition Organization;
  - Signature of Licensee or authorized person; and
  - Signature of Disposition Agent.
  - Licensee annual reports, including;
  - Licensee or authorized person name;
  - License or authorization number;
  - Licensee or authorized person address;
  - Name of USDA-approved plan under which licensed;
  - Lot number (if applicable);
  - Lot location (if applicable);
  - Geospatial location or other valid land descriptor (if applicable);
  - Total acreage planted;
  - Total acreage disposed; and
  - Total acreage harvested.
- Records related to Enforcement:
  - Name of Complainant;
  - Mailing address;
  - Email address (if applicable);
  - Phone number; and
  - Summary of Complaint.

RECORD SOURCE CATEGORIES:

These records contain information obtained from: The individual or entity

who is the subject of these records including a complainant or subject of an audit; USDA Farm Service Agency; U.S. Domestic Hemp Production Program; States and Tribal governments; and laboratories authorized to test hemp.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside USDA, as follows, to the extent that such disclosures are compatible with the purposes for which the information was collected:

(1) To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; (c) any employee of the agency in his or her individual capacity where the agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(2) To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation.

(3) To law enforcement in real time as required by Section 297C(d) of the Farm Bill. Information to be shared via this routine use will include contact information for each hemp producer, a legal description of the land on which hemp is grown, and the license status of each producer.

(4) To law enforcement: When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

(5) To a Congressional office from the record of an individual in response to any inquiry from that Congressional office made at the written request of the individual to whom the record pertains.

(6) To the National Archives and Records Administration or to the General Services Administration for records management activities conducted under 44 U.S.C. 2904 and 2906.

(7) To agency contractors, grantees, experts, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

(8) To a Federal, State, local or Tribal agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary, to obtain information relevant to an investigation concerning the issuance, retention or revocation of a license.

(9) To a Federal, State, local, or Tribal or other public authority the fact that this system of records contains information relevant to the issuance, retention or revocation of a license. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

(10) To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To another Federal agency or Federal entity, when the USDA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and electronic format. In the beginning, the information will be stored in hard copy until the electronic system can securely store all the records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individual or business name, individual or business address, or other unique identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained indefinitely until appropriate disposition authority is obtained, and records will then be disposed of in accordance with the authority granted.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or in restricted areas, in which access is limited to authorized personnel. Access to computerized data is password-protected and under the responsibility of the system manager and subordinates. The database administrator has the ability to review audit trails, thereby permitting regular ad hoc monitoring of computer usage.

RECORDS ACCESS PROCEDURES:

Any individual may request information concerning himself/herself from the System Manager. Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may submit a request in writing to the Chief Information Officer, Department of Agriculture, Agricultural Marketing Service, Mail Stop 0244, Room 1752–S, 1400 Independence Avenue SW, Washington, DC 20250–0244.

When seeking records about yourself from this system of records or any other

Departmental system of records, your request must conform to the Privacy Act regulations set forth in 7 CFR part 1, subpart G. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain more information for this purpose from the AMS FOIA and Privacy Act Officer, Telephone: (202) 205–0288; Email: *ams.foia@usda.gov.* In addition, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the record would have been created; and
- Provide any other information that will help the FOIA staff determine which AMS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her agreement for you to access his or her records.

Without complete information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their requests to the address indicated in the ''Record Access'' section, above. An individual who is the subject of a record in this system may seek to amendment their records. A determination whether a record may be amended will be made at the time a request is received.

NOTIFICATION PROCEDURES:

Any individual may request general information regarding this system of records or information as to whether the system contains records pertaining to him/her from the System Manager. All inquiries pertaining to this system should be in writing and submitted to the address listed below in the Records Access Procedures section, must name the system of records as set forth in the system notice, and must contain the individual's name, telephone number, address, and email address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

N/A

HISTORY:

N/A.

[FR Doc. 2020–00658 Filed 1–15–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Committee Meeting of the Codex Committee on General Principles

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 February 21, 2020. 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 32nd Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission, in Bordeaux, France, March 23–27, 2020. 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 32nd Session of the CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for February 21, 2020, from 1:00–4:00 EST.

ADDRESSES: The public meeting will take place in Meeting Room 107–A of the Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250. Documents related to the 32nd Session of the CCGP will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings/en/.*

Ms. Mary Frances Lowe, U.S. Delegate to the 32nd Session of the CCGP, invites U.S. interested parties to submit their comments electronically to the following email address: *maryfrances.lowe@usda.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 32nd Session of the CCGP by conference call, please use the call-in-number: 888–844–9904 and participant code 5126092.

Registration: Attendees may register to attend the public meeting by emailing *uscodex@usda.gov* by February 19, 2020. 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 32nd Session of the CCGP, contact U.S. Delegate, Ms. Mary Frances Lowe, U.S. Manager for Codex Alimentarius, U.S. Codex Office, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250; phone: +1 (202) 205–7760; email: *maryfrances.lowe@usda.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) 205–7760, 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 General Principles (CCGP) are to deal with such procedural and general matters as are referred to it by the Codex Alimentarius Commission, including:

(a) The review or endorsement of procedural provisions/texts forwarded by other subsidiary bodies for inclusion in the Procedural Manual of the Codex Alimentarius Commission; and

(b) The consideration and recommendation of other amendments to the Procedural Manual.

The CCGP is hosted by France. The United States attends the CCGP as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 32nd Session of the CCGP will be discussed during the public meeting:

- Matters referred to the committee

- Information on activities of FAO and WHO relevant to the work of CCGP
- Procedural guidance for committees working by correspondence
- Revisions/amendments to Codex texts
- Format and structure of the Codex Procedural Manual
- Discussion paper on monitoring the use of Codex Standards
- Discussion paper on monitoring Codex results in the Context of Sustainable Development Goals (SDGs)
- Other business

Public Meeting

At the February 21, 2020 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 Ms. Mary Frances Lowe, U.S. Delegate for the 32nd Session of the CCGP (see **ADDRESSES**). Written comments should state that they relate to activities of the 32nd Session of the CCGP.

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: *https://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 *https://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 December 26, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2020–00590 Filed 1–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead Resource Advisory Committee (RAC) will meet in Kalispell, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. In June 2016, the National Secure Rural Schools (SRS) Resource Advisory Committee (RAC) charter enabled SRS RACs to provide recommendations on Forest Service recreation fee proposals; if the designated Units are not currently coordinating with another active Recreation RAC; the current charter states that upon request of the Designated Federal Officer (DFO), the SRS RAC may make recommendations regarding:

a. The implementation of a new recreation fee at specific recreation fee site;

b. The implementation of a fee increase at an existing recreation fee;

c. The implementation or elimination of noncommercial, individual special recreation permit fees;

d. The elimination of a recreation fee; and,

e. The expansion or limitation of the recreation fee program.

RAC information can be found at the following website: *https://www.fs.usda.gov/main/pts/home.*

DATES: The meeting will be held on: Tuesday, January 28, 2020, from 4:00–7:00 p.m.

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

ADDRESSES: The meeting will be held at the Flathead National Forest, Supervisor's Office, 650 Wolfpack Way, Kalispell, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Flathead National Forest, Supervisor's Office. Please call ahead at 406–758–5200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janette Turk, Designated Federal Official, by phone at 406–758–5335 or via email at *janette.turk@usda.gov.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

Discuss, recommend, and approve the following:

Total of 14 fee proposals
1 new fee site
13 fee increases
2 Campgrounds
12 Cabin and lookout rentals
Lindbergh Lake campground is the only new fee proposal

Campgrounds:

➡ 1 proposed fee increase to $13 per night
➡ 1 proposed new fee site at $10 per night

Lookouts and Cabins:

➡ 12 proposed fee increases ranging from $50 to $70 per night.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Monday, January 27, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written

comments and requests for time for oral comments must be sent to Janette Turk, Designated Federal Official, 650 Wolfpack Way, Kalispell, MT 59901; by email to *janette.turk@usda.gov,* or via facsimile to 406–758–5379.

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

Dated: January 13, 2020.

Cikena Reid,

USDA, Committee Management Officer.

[FR Doc. 2020–00649 Filed 1–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

The Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet on February 6, 2020, in Nevada City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) as reauthorized by Public Law 114–10 and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcwUAAS.*

DATES: The meeting will be held Thursday, February 6, 2020, at 10:30 a.m. All RAC meetings are subject to cancellation. In the case of inclrnment weather, a backup meeting is scheduled for Friday, February 7, 2020, at the same time and location. For status of meeting prior to attendance, please contact the person listed under *For Further Information Contact.*

ADDRESSES: The meeting will be held at the Tahoe National Forest Supervisors Office SO conference room, 631 Coyote Street, Nevada City, CA 95959.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 631 Coyote Street, Nevada City, California 95959. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Joe Flannery, Committee Coordinator by phone at (530) 478–6205 or via email at *joseph.flannery@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Welcome and oriententation of members
2. Federal Advisory Committee Act review
3. Validation of project ranking criteria and voting process
4. Project proponent presentations
5. Review and selection of project proposals

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 24, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Joe Flannery, Committee Coordinator, 631 Coyote Street, Nevada City, CA 95959; by email to *joseph.flannery@usda.gov,* or via phone to (530) 478–6109.

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

Dated: January 13, 2020.

Cikena Reid,

USDA, Committee Management Officer.

[FR Doc. 2020–00620 Filed 1–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mineral County Resource Advisory Committee (RAC) will meet in Superior, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvCAAS.*

DATES: The meeting will be held on Wednesday, January 29, 2020, at 6:00 p.m. and Wednesday, February 5, 2020, at 6:00 p.m.

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

ADDRESSES: The meeting will be held at the Superior Ranger District, 209 W Riverside Ave., Superior, MT.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Superior Ranger District.

FOR FURTHER INFORMATION CONTACT: Carole Johnson, DFO, by phone at 406–822–4233 or via email at *carole.johnson@usda.gov* or Racheal Koke at 406–822–3930 or via email at *racheal.koke@usda.gov.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to:

1. Hear proposal presentations
2. Approve meeting minutes
3. Discuss, recommend, and approve new Title II projects;

The meeting is open to the public. The agenda will include time for people

to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Monday, January 27, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Racheal Koke, PO Box 460, Superior, MT 59872; or by email to *racheal.koke@usda.gov.*

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

Dated: January 13, 2020.

Cikena Reid,

USDA, Committee Management Officer.

[FR Doc. 2020–00618 Filed 1–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lincoln Resource Advisory Committee (RAC) will meet in Libby, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/pts/specialprojects/racs.*

DATES: The meeting will be held on Monday, January 27, 2020, at 1:00 p.m.

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

ADDRESSES: The meeting will be held at the Kootenai National Forest Supervisor's Office, 31374 U.S. Hwy. 2, Libby, Montana 59923.

Written comments may be submitted to the RAC Coordinator, Katie Andreessen.

FOR FURTHER INFORMATION CONTACT: Katie Andreessen, RAC Coordinator, by phone at 406–283–7781 or via email at *marikate.andreessen@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Vote on a RAC Chair;
2. Discuss, prioritize, and approve project proposals;
3. Discuss and/or approve recreation proposal; and
4. Receive public comment.

The meeting is open to the public. The agenda will include time for people to make oral statements, subject to time requirements by RAC facilitator. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting.

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

Dated: January 13, 2020.

Cikena Reid,

USDA, Committee Management Officer.

[FR Doc. 2020–00650 Filed 1–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rural Business-Cooperative Service

[Docket ID RBS–20–Business-0002]

Request for Information on a Higher Blends Infrastructure Incentive Program

AGENCY: Rural Business-Cooperative Service and the Commodity Credit Corporation, USDA.

ACTION: Notice of request for information (RFI) for a Higher Blends Infrastructure Incentive Program (HBIIP).

SUMMARY: The United States Department of Agriculture requests input from all interested parties on a Higher Blends Infrastructure Incentive Program (HBIIP). The Department Agency is exploring options to expand domestic ethanol and biodiesel availability and is seeking information on opportunities to consider infrastructure projects to facilitate increased sales of higher biofuel blends (E15/B20 or higher.) This effort will build on biofuels infrastructure investments and experience gained through the Biofuels Infrastructure Partnership (BIP). USDA administered BIP from 2016–2019 through state and private partners to expand the availability of E15 and E85 infrastructure to make available higher ethanol blends at retail gas stations around the country.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. Eastern Time on January 30, 2020. Comments received after the posted deadline will not be considered, regardless of postmark.

ADDRESSES: Comments submitted in response to this notice may be submitted online Via the Federal eRulmaking Portal. Go to *http://www.regulations.gov* and search for the Docket ID RBS–20–Business–0002. Follow the online instructions for submitting comments.

All comment received will be posted without change and publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Brodziski: telephone (202)690–4730, email: *mark.brodziski@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202)720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

This Request for Information (RFI) solicits information on options for fuel ethanol and biodiesel infrastructure, innovation, products, technology, and data derived from all HBIIP processes and/or science that drive economic growth, promote health, and increase public benefit. Through this RFI, USDA seeks input from the public, including but not limited to: (a) Retail fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, and similar entities with capital investments; (b) equipment providers, equipment installers, certification entities and other stakeholder/manufacturers (both upstream and down); (c) fuel distribution centers, including terminals

and depots; and (d) those performing innovative research, and/or developing enabling platforms and applications in manufacturing, energy production, and agriculture.

This RFI is intended to inform notable gaps, vulnerabilities, and areas to promote and protect in the HBIIP that may benefit from Federal government attention. The information can include suggestions on those areas of greatest priority within the HBIIP, as well as past or future Federal government efforts to build, promote, and sustain the sale and use of renewable fuels. The public input provided in response to this RFI will inform USDA as well as private sector and other stakeholders with interest in and expertise relating to such a promotion.

Instructions

Response to this RFI is voluntary. Each individual or institution is requested to submit only one response as directed in the **ADDRESSES** section of this notice. Submission must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Comments containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered. Comments submitted in response to this notice are subject to Freedom of Information Act (FOIA). Responses to this RFI may also be posted, without change, on a Federal website.

Therefore, we request that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

To inform the Federal government's decision-making and establish the Nation's guiding principles in the promotion of the HBIIP, USDA now seeks public input on how U.S. Government action might support appropriately the expansion of a nationwide effort. To that end, responders are specifically requested to answer one or more of the following questions in their submissions. Consortia responses are also encouraged.

1. What type of assistance/incentive would encourage the increased sales/use of fuel ethanol and/or biodiesel in a way that is most cost-effective to the government?

a. Should a potential biofuels infrastructure program incentivize the lowest cost per incremental gallon of ethanol or biodiesel use/sales at the retail/fueling station level or terminal/depot/wholesale level or both retail/fueling station and terminal/depot/wholesale levels?

b. What types of equipment and infrastructure should be eligible under the program?

2. Should program funding provided to participants include: (a) Direct cost-share toward purchase of equipment, retrofitting, and enhancements; (b) higher blend biofuel sales or marketing incentives; (c) both; or (d) other?

3. Should the program include minimum standards for equipment, such as equipment certified to dispense biofuel blends containing 25 percent ethanol (certified for use with E15) and/or B20-compatable or higher biofuel blend dispensers?

4. From your perspective, what types of efforts have proven to be effective in increasing higher biofuel blends sales?

a. What are the most appropriate higher biofuel blend levels (for both ethanol and biodiesel) that the program should be incentivizing?

b. Should there be a minimum requirement on the number or percentage of dispensers converted to higher biofuel blends at a retail site or fueling station?

c. Should there be a requirement for certain dispenser configurations such as shared hoses (as practicable and allowed by law, for higher biofuel blends to share a pump hose with existing fuels)?

d. Should there be a requirement for signage (as allowed by law) and marketing?

e. Should USDA insist on consistent terminology and branding and naming of E15 and/or B20 or other higher biofuel blends?

5. From your perspective, if cost-sharing is required, what minimum level of cost-share (owner contribution) should be required of recipients of funding? What would you consider to be the most cost-effective level of cost-share?

6. What steps should a potential biofuels program take to ensure equitable program participation by small- to mid-sized station owners? (That is, owners of less than 10 to less than 20 sites/stations. We are especially interested to hear from small- to midsized station owners on this question.)

7. From your perspective, how much post-award reporting is reasonable for recipients of funding? *e.g.* quarterly or annual reporting of higher blend fuel sales by the participant?

8. What other barriers exist that limit expansion of availability of biofuels to consumers? What specific actions could USDA take to guide a transformation and/or expansion of a nationwide biofuels-infrastructure program, in both the short- and long-term?

9. To what extent should infrastructure investments made today be required to accommodate fuels anticipated to be in the marketplace of tomorrow?

10. Please provide feedback on the effectiveness of the 2015–2019 Biofuels Infrastructure Partnership (BIP) program.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–00617 Filed 1–15–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on January 29, 2020, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, January 29

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Old Business
4. NIST AI Standardization Program
5. Industry presentation: AI Chips
6. New Business

Closed Session

7. Discussion of matters determined to be exempt from the provisions

relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than January 22, 2020.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 18, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and l0(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–00552 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China). The period of review (POR) is January 1, 2017 through December 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0486 or (202) 482–0250, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2014, Commerce published in the **Federal Register** a countervailing duty order on chlorinated isos from China.[1] Pursuant to a request from the petitioners,[2] Commerce initiated this administrative review on February 6, 2019.[3] On August 21, 2019, Commerce postponed the preliminary results of this review and extended the deadline until January 9, 2020.[4]

Scope of the Order

The product covered by this order is chlorinated isos from China. For a complete description of the scope of the order, see the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this countervailing duty review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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 electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, during the period January 1, 2017 through December 31, 2017, the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Hebei Jiheng Chemical Co., Ltd	397.61
Heze Huayi Chemical Co., Ltd ...	1.52
Juancheng Kangtai Chemical Co., Ltd	2.85

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of publication of this notice in the **Federal Register**.[7] In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary results, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Countervailing Duty Order*, 79 FR 67424 (November 13, 2014).

[2] The petitioners are Bio-Lab, Inc., Clearon Corp., and Occidental Chemical Corporation.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159 (February 6, 2019).

[4] *See* Memorandum, ''Chlorinated Isocyanurates from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated August 21, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China; 2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* 19 CFR 351.224(b).

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 review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, 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.

Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of any issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rates and Cash Deposit Requirement

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–00638 Filed 1–15–20; 8:45 am]

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[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Deacero S.A.P.I de C.V. (Deacero) and Grupo Simec made sales of subject merchandise at less than normal value during the November 1, 2017 through October 31, 2018 period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Deacero) or George McMahon (Grupo Simec), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2014, Commerce published the antidumping duty order on steel concrete reinforcing bar (rebar) from Mexico in the **Federal Register.**[1] On February 6, 2019, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order.*[2]

[1] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019) (*Initiation Notice*).

Commerce initiated this administrative review covering the following companies: AceroMex S.A., Aceros Especiales Simec Tlaxcala, S.A. de C.V. (AEST), Arcelor Mittal, ArcelorMittal Celaya, ArcelorMittal Cordoba S.A. de C.V., ArcelorMittal Lazaro Cardenas S.A. de C.V., Cia Siderurgica De California, S.A. de C.V., Compania Siderurgica de California, S.A. de C.V., DE ACERO SA. DE CV., Deacero, S.A.P.I. de C.V, Grupo Simec, Grupo Villacero S.A. de C.V., Industrias CH, Orge S.A. de C.V. (Orge), Siderurgica Tultitlan S.A. de C.V., Simec International 6 S.A. de C.V. (Simec 6), Talleres y Aceros, S.A. de C.V., and Ternium Mexico, S.A. de C.V. On March 1, 2019, we limited the number of respondents selected for individual examination in this administrative review to Deacero and Grupo Simec.[3] We did not select the remaining companies [4] for individual examination, and these companies remain subject to this administrative review.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[5] On July 16, 2019, we extended the deadline for the preliminary results to January 9, 2020.[6] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7] A list of topics included in the Preliminary Decision Memorandum is included as the appendix to this notice.

Scope of the Order

Imports covered by the order are shipments of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The merchandise subject to review is currently classifiable under items 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other Harmonized Tariff Schedule of the United States (HTSUS) numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Constructed export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B–8024 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/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice.

Rate for Non-Selected Companies

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available.

In this review, we calculated a weighted-average dumping margin of 7.25 percent for Deacero and 6.74 percent for Grupo Simec. In accordance with section 735(c)(5)(A) of the Act, Commerce assigned the weighted-average of these two calculated weighted-average dumping margins, 7.11 percent, to the 11 non-selected companies in these preliminary results. The rate calculated for the 11 non-selected companies is a weighted-average percentage margin which is calculated based on the publicly ranged U.S. values of the two reviewed companies with an affirmative antidumping duty margin.[8]

Preliminary Results of the Review

We preliminarily determine the following weighted-average dumping margins exist for the POR:

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I de C.V	7.25

[3] *See* Memorandum, ''Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico; 2017–2018, Selection of Respondents for Individual Examination,'' dated March 1, 2019.

[4] We previously collapsed, or found affiliated, 5 of the 18 firms listed in the *Initiation Notice* (*i.e.,* AEST, Grupo Simec, Industrias CH, Orge, and Simec 6) into the single entity ''Grupo Simec.'' Commerce has collapsed several additional companies into the single entity, ''Grupo Simec'' which are identified in the rates section below. Furthermore, the petitioner requested a review of DEACERO SA. DE CV. and Deacero S.A.P.I. CV. However, in the original investigation, DEACERO SA. DE CV.'s name was changed to Deacero S.A.P.I. CV. Therefore, consistent with the legal name change stated in the *LTFV Preliminary Determination* of the original investigation, we are treating the predecessor company name and Deacero's current name as one and the same. *See Steel Concrete Reinforcing Bar From Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 22802 (April 24, 2014) (*LTFV Preliminary Determination*).

[5] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

[6] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,'' dated July 16, 2019.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico, 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

Producer and/or exporter	Weighted-average dumping margin (percent)
Grupo Simec (Simec International 6 S.A. de C.V., Orge S.A. de C.V., Aceros Especiales Simec Tlaxcala, S.A. de C.V., Fundiciones de Acero Estructurales, S.A. de C.V., Operadora de Perfiles Sigosa, S.A. de C.V., Simec International, S.A. de C.V., Simec International 7, S.A. de C.V., Grupo Chant, S.A.P.I. de C.V., and Siderúrgicos Noroeste, S.A. de C.V.) [9]	6.75
AceroMex S.A	7.11
Arcelor Mittal	7.11
ArcelorMittal Celaya	7.11
ArcelorMittal Cordoba S.A. de C.V	7.11
ArcelorMittal Lazaro Cardenas S.A. de C.V	7.11
Cia Siderurgica De California, S.A. de C.V	7.11
Compania Siderurgica de California, S.A. de C.V [10]	7.11
Grupo Villacero S.A. de C.V	7.11
Siderurgica Tultitlan S.A. de C.V	7.11
Talleres y Aceros, S.A. de C.V	7.11
Ternium Mexico, S.A. de C.V	7.11

Assessment Rate

Upon issuance of the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Deacero or Grupo Simec is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[11] If the weighted-average dumping margin for Deacero or Grupo Simec is zero or *de minimis* in the final results, or an importer-specific assessment rate is zero or *de minimis* in the final results, we will instruct CBP not to assess antidumping duties on any of their entries in accordance with the *Final Modification for Reviews*.[12]

In accordance with Commerce's assessment practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(I), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the all-others rate established in the less-than-fair-value investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[14]

Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case

[9] In the *2014–2015 Review,* Commerce collapsed Orge S.A. de C.V. (Orge), Compania Siderurgica del Pacifico S.A. de C.V. (Siderurgica Pacifico), Grupo Chant S.A.P.I. de C.V. (Chant), RRLC S.A.P.I. de C.V. (RRLC), Siderurgica del Occidente y Pacifico S.A. de C.V. (Siderurgica Occidente), Simec International 6 S.A. de C.V. (Simec 6), Simec International 7 S.A. de C.V. (Simec 7), and Simec International 9 S.A. de C.V (Simec 9) into the single entity ''Grupo Simec.'' *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 27233 (June 14, 2017) (*2014–2015 Review*). In the *2016–2017 Review,* Commerce collapsed AEST, Fundiciones de Acero Estructurales, S.A. de C.V. (FUNACE), Perfiles Comerciales Sigosa, S.A. de C.V. (Perfiles), and Operadora into the single entity ''Grupo Simec,'' which included Simec 6 and Orge. *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 63622 (December 11, 2018), and Preliminary Decision Memorandum at 5; unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 35599 (July 24, 2019) (*2016–2017 Review*).

In this administrative review, Commerce is preliminarily collapsing Siderúrgicos Noroeste, S.A. de C.V. and Simec International with Simec 6, Orge, AEST, FUNACE, Operadora, Simec 7, and Chant in the single entity, ''Grupo Simec.'' Consistent with the *2016–2017 Review,* we find that Industrias CH is affiliated with Grupo Simec but Commerce is not collapsing the company into the single entity because it is not involved in the production or sale of subject merchandise. *See* Grupo Simec Affiliation and Collapsing Memorandum, dated concurrently with this notice.

[10] In the *Initiation Notice,* Commerce inadvertently transcribed the requested company name as ''Compafiia Siderurgica de California, S.A. de C.V.'' The correct spelling of this company name is listed in this rate table.

[11] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[12] *Id.,* 77 FR at 8102.

[13] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

[14] *See* 19 CFR 351.224(b).

briefs.[15] However, Commerce intends to conduct verification of the questionnaire responses submitted by Grupo Simec after the preliminary results. Thus, Commerce will subsequently notify parties of the case brief and rebuttal brief deadlines. Parties who submit case briefs or rebuttal briefs in this proceeding 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.[16] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline.

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, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of 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.

We intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–00646 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that diamond sawblades and parts thereof from the People's Republic of China (China) were not sold at less than normal value during the period of review (POR) November 1, 2017 through October 31, 2018. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[1] Because the deadlines in administrative reviews are determined based on the last day of the anniversary month, which, in this case, is November 30, 2018, prior to the beginning of the federal government closure, the tolling memo applies to this administrative review. As a result, the revised deadline for the preliminary results of this administrative review became September 11, 2019. On February 6, 2019, Commerce initiated the administrative review of the antidumping duty order on diamond sawblades and parts thereof from China.[2] The administrative review covers one mandatory respondent, Chengdu Huifeng New Material Technology Co., Ltd. (Chengdu Huifeng). On August 14, 2019, Commerce extended the time limit for issuing the preliminary results of this review by 120 days, to no later than January 9, 2020.[3]

Scope of the Order

The merchandise subject to the antidumping duty order is diamond sawblades and parts thereof, which is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection (CBP). Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.

While the HTSUS numbers are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[4]

[15] *See* 19 CFR 351.309(d).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2), and 19 CFR 351.303 (for general filing requirements).

[1] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[3] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2017–2018,'' dated August 14, 2019.

[4] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China:

Continued

Preliminary Determination of No Shipments

Three companies that received a separate rate in previous segments of the proceeding and are subject to this review reported that they did not have any exports of subject merchandise during the POR.[5] We requested that CBP report any contrary information.[6] To date, we have not received any contrary information from either CBP in response to our inquiry or any other sources that these companies had any shipments of the subject merchandise sold to the United States during the POR.[7] Further, consistent with our practice, we find that it is not appropriate to rescind the review with respect to these companies, but rather to complete the review and issue appropriate instructions to CBP based on the final results of review.[8]

Separate Rates

Commerce preliminarily determines that six respondents are eligible to receive separate rates in this review.[9]

Separate Rate for Eligible Non-Selected Respondents

Commerce preliminarily determines that the respondents not selected for individual examination, Bosun Tools Co., Ltd. (Bosun Tools), the Jiangsu Fengtai Single Entity,[10] Wuhan Wanbang Laser Diamond Tools Co., Ltd. (Wuhan Wanbang), Xiamen ZL Diamond Technology Co., Ltd. (Xiamen ZL), and Zhejiang Wanli Tools Group Co., Ltd. (Zhejiang Wanli), are eligible to receive a separate rate in the administrative review.[11] Consistent with our practice, we assigned to Bosun Tools, the Jiangsu Fengtai Single Entity, Wuhan Wanbang, Xiamen ZL, and Zhejiang Wanli the weighted-average margin calculated for Chengdu Huifeng as the separate rate for the preliminary results of this review.[12]

China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,[13] the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.,* 82.05 percent) is not subject to change.[14] Aside from the no-shipment and separate rate companies discussed above, Commerce considers all other companies for which a review was requested (which did not file a separate rate application) to be part of the China-wide entity.[15]

Verification

As provided in section 782(i) of the Act, we verified the information provided by Chengdu Huifeng in this review of diamond sawblades from China using standard verification procedures, including on-site inspection of the producer/exporter's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report for Chengdu Huifeng dated concurrently with this notice.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213. Export price is calculated in accordance with section 772(c) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 found at *http://enforcement.trade.gov/frn/.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The signed and electronic versions of Preliminary Decision Memorandum are identical in content.

Preliminary Results of Administrative Review

Commerce preliminarily determines that the following weighted-average

Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* No-Shipment Letters from Weihai Xiangguang Mechanical Industrial Co., Ltd., dated March 5, 2019, and from Danyang Hantronic Import & Export Co., Ltd., and Danyang Weiwang Tools Manufacturing Co., Ltd., dated March 8, 2019.

[6] *See* CBP message numbers 9352317, 9352319 and 9352320, dated December 18, 2019, available at *https://aceservices.cbp.dhs.gov/adcvdweb/.*

[7] *See Preliminary Decision Memorandum* at 3–4 f.

[8] *See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 84 FR 71900 (December 30, 2019).

[9] *See* Preliminary Decision Memorandum at 8–10.

[10] Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 26912, 26913, n.5 (June 12, 2017). We received review requests for Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Diamond Tools Co., Ltd., and Jiangsu Fengtai Tools Co., Ltd.

[11] *See* Preliminary Decision Memorandum at 10–11 for more details.

[12] *Id.*

[13] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 32344, 32345 (June 8, 2015).

[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329, 1331–32 (January 11, 2018) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the China-wide entity are: ASHINE Diamond Tools Co., Ltd., Danyang City Ou Di Ma Tools Co., Ltd., Danyang Huachang Diamond Tool Manufacturing Co., Ltd., Danyang Like Tools Manufacturing Co., Ltd., Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Guilin Tebon Superhard Material Co., Ltd., Hangzhou Deer King Industrial and Trading Co., Ltd., Hangzhou Kingburg Import & Export Co., Ltd., Hebei XMF Tools Group Co., Ltd., Henan Huanghe Whirlwind Co., Ltd., Henan Huanghe Whirlwind International Co., Ltd., Hong Kong Hao Xin International Group Limited, Hubei Changjiang Precision Engineering Materials Technology Co., Ltd., Hubei Sheng Bai Rui Diamond Tools Co., Ltd., Huzhou Gu's Import & Export Co., Ltd., Jiangsu Huachang Diamond Tools Manufacturing Co., Ltd., Jiangsu Inter-China Group Corporation, Jiangsu Youhe Tool Manufacturer Co., Ltd., Orient Gain International Limited, Pantos Logistics (HK) Company Limited, Pujiang Talent Diamond Tools Co., Ltd., Qingdao Hyosung Diamond Tools Co., Ltd., Qingyuan Shangtai Diamond Tools Co., Ltd., Qingdao Shinhan Diamond Industrial Co., Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co., Ltd., Saint-Gobain Abrasives (Shanghai) Co., Ltd., Shanghai Jingquan Industrial Trade Co., Ltd., Shanghai Starcraft Tools Co. Ltd., Sino Tools Co., Ltd., Wuhan Baiyi Diamond Tools Co., Ltd., Wuhan Sadia Trading Co., Ltd., Wuhan ZhaoHua Technology Co., Ltd., Zhenjiang Inter-China Import & Export Co., Ltd., ZL Diamond Technology Co., Ltd., and ZL Diamond Tools Co., Ltd. Although Shanghai Starcraft Tools Co. Ltd. submitted comments stating that its shipments listed in the CBP import data placed on the record by Commerce were not subject merchandise, we did not treat the submission as a no-shipment statement and, therefore, we consider Shanghai Starcraft Tools Co. Ltd. to be part of the China-wide Entity. *See* the ''Preliminary Determination of No Shipments'' section of the Prelminary Decision Memorandum.

dumping margins exist for the administrative review covering the period November 1, 2017 through October 31, 2018:

Exporter	Weighted-average dumping margin (percent)
Bosun Tools Co., Ltd	0.00
Chengdu Huifeng New Material Technology Co., Ltd	0.00
Jiangsu Fengtai Single Entity	0.00
Wuhan Wanbang Laser Diamond Tools Co., Ltd	0.00
Xiamen ZL Diamond Technology Co., Ltd	0.00
Zhejiang Wanli Tools Group Co., Ltd	0.00

Disclosure

We intend to disclose calculations performed in these preliminary results to parties within five days after public announcement of the preliminary results.[16]

Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[17] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[18] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[19]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[20] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless the deadline is extended, Commerce intends to issue the final results of these reviews, including the results of its analysis of issues raised by parties in their comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuing the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by these reviews.[21] If a respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of these reviews, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and, where possible, the total entered value of sales. Specifically, Commerce will apply the assessment rate calculation method adopted in *Final Modification for Reviews.*[22] Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[23]

For entries that were not reported in the U.S. sales databases submitted by exporters individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. If Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[24]

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be equal to the weighted-average dumping margin established for Chengdu Huifeng in the final results of this administrative review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these PORs. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Commerce is issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1)(B), 751(a)(3) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

[16] *See* 19 CFR 351.224(b).

[17] *See* 19 CFR 351.309(c).

[18] *See* 19 CFR 351.309(d).

[19] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.212(b)(1).

[22] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) (*Final Modification for Reviews*).

[23] *See* 19 CFR 351.106(c)(2).

[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–00639 Filed 1–15–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of seamless refined copper pipe and tube (copper pipe and tube) from the People's Republic of China (China) were made at less than normal value during the period of review (POR), November 1, 2017 through October 31, 2018. We further find that each of the companies for which an administrative review was requested, and not withdrawn, failed to demonstrate eligibility for a separate rate; therefore, each is part of the China-wide entity.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this review on February 6, 2019.[1] On September 18, 2019, Commerce published the *Preliminary Results* of this administrative review and invited interested parties to comment on the *Preliminary Results*.[2] These final results of administrative review cover two companies for which an administrative review was initiated and not rescinded.[3] No party submitted case or rebuttal briefs.

Scope of the Order[4]

For the purpose of this order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to six inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (''OD''), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating *(e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (''ASTM'') ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this order are all sets of covered products, including ''line sets'' of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase ''all sets of covered products'' denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

''Refined copper'' is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the HTSUS. Products subject to this order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

No interested party submitted comments on the *Preliminary Results.* Accordingly, Commerce did not modify its analysis from that presented in the *Preliminary Results,* and no decision memorandum accompanies this **Federal Register** notice.[5]

China-Wide Entity

For the purposes of the final results of this administrative review, we continue to find that the Golden Dragon Entity[6] is part of the China-wide entity because: (1) It failed to respond to Commerce's antidumping questionnaire after being selected as a mandatory respondent; and (2) we are unable to verify its separate rate status.[7] We also continue to find that Sinochem Ningbo Import & Export Co., Ltd. is a part of the China-wide entity because it did not file a separate

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019) (*Initiation Notice*).

[2] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018,* 84 FR 49095 (September 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See Preliminary Results,* 84 FR at 49096–49097.

[4] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico,* 75 FR 71070 (November 20, 2010) (*Order).*

[5] For a detailed discussion of Commerce's analysis, *see Preliminary Results* and accompanying Preliminary Decision Memorandum.

[6] The Golden Dragon Entity is a collapsed entity that encompasses three of the companies initiated upon in the *Initiation Notice, i.e.,* Golden Dragon Holding (Hong Kong) International Co., Ltd., Golden Dragon Precise Copper Tube Group, Inc., and Hong Kong GD Trading Co, Ltd. *See Preliminary Results,* 84 FR at 49095.

[7] *Id.*

rate application or a separate rate certification within 30 calendar days of the publication of the *Initiation Notice.*

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested, and Commerce did not self-initiate, a review of the China-wide entity in the instant review, the entity is not under review; therefore, the entity's current rate, *i.e.,* 60.85 percent,[9] is not subject to change.

Assessment

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, amended (the Act) and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review in the **Federal Register**. Consistent with Commerce's assessment practice in non-market economy cases, if Commerce determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which the exporter was reviewed; (2) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the China-wide entity, which is 60.85 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter with the subject merchandise. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also 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)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00647 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[9] *See Preliminary Results,* 84 FR at 49096.

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review; and Amended Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 18, 2019, the United States Court of International Trade (the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) administrative review of tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (China) covering the period of review (POR) from June 1, 2015 through May 31, 2016. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the *Final Results* in the 2015–2016 administrative review of TRBs from China, and that Commerce is amending the *Final Results* with respect to the assignment of a separate rate to Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd. (Zhaofeng).

DATES: Applicable December 28, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Alex Wood, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–1959, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2018, Commerce published the *Final Results* of the 2015–2016 AD administrative review of TRBs from China, in which Commerce determined that Zhaofeng was not eligible for a separate rate because it had misrepresented its reported U.S. sales data.[1] The *Final Results* were appealed to the Court by Zhaofeng, and on December 27, 2018, the Court held that

[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015–2016,* 83 FR 1238 (January 10, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM) at Comments 1 and 2.

Commerce had not adequately explained how Zhaofeng's misrepresentations of its sales data related to Commerce's separate rate analysis of whether Zhaofeng was independent of government control, and remanded the *Final Results* for a redetermination consistent with the Court's opinion.[2] In accordance with the Court's *Remand Order,* Commerce assigned Zhaofeng a separate rate and applied adverse facts available for Zhaofeng's misrepresentations of its U.S. sales data and its failure to cooperate to the best of its ability, applied the highest previously calculated dumping margin to Zhaofeng, 92.84 percent.[3] On December 18, 2019, the Court sustained Commerce's *Remand Redetermination*.[4] Therefore, the effective date of this notice is December 28, 2019.

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 18, 2019 judgment sustaining Commerce's *Remand Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act. Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* to grant Zhaofeng a separate rate. The separate-rate, weighted-average dumping margin determined for Zhaofeng in the *Remand Redetermination* is the same as the weighted-average dumping margin that was determined for Zhaofeng in the *Final Results,* 92.84 percent.

Assessment of Antidumping Duties

In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise Zhaofeng exported during the 2015–2016 POR based on the assessment rate equal to the weighted-average dumping margin determined for Zhaofeng by Commerce in these amended final results of review.

Cash Deposit Requirements

As of February 26, 2019, Zhaofeng has a superseding cash deposit rate, because it was assigned a separate rate in a completed administrative review for a more recent period of review of this order.[7] Because Zhaofeng has a superseding cash deposit rate, we have not revised its cash deposit rate.

Notifications to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00643 Filed 1–15–20; 8:45 am]

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[2] *See Zhejiang Zhaofeng Mechanical and Electric Co., Ltd.* v. *United States,* 355 F. Supp. 3d 1329, 1333–1335 (CIT December 27, 2018) (*Remand Order*).

[3] *See* Final Results of Redetermination Pursuant to Court Remand *Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.,* v. *United States,* Court No. 18–00004, Slip. Op. 18–182 (CIT December 27, 2018), dated April 25, 2019 (*Remand Redetermination*).

[4] *See Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.,* v. *United States,* Court No. 18–00004, Slip Op. 19–167 (CIT December 18, 2019).

[5] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[7] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 6132 (February 26, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that POSCO, a producer and/or exporter of certain carbon and alloy cut-to-length plate (CTL plate) from the Republic of Korea (Korea), received net countervailable subsidies during the period of review (POR), April 4, 2017 through December 31, 2017.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068 and (202) 482–0339, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2019, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**, and invited interested parties to comment.[1] On September 18, 2019, Nucor Corporation (Nucor) submitted pre-verification comments on the record of this administrative review.[2] Between September 23, 2019 and September 27, 2019, we conducted verifications of the questionnaire responses submitted by POSCO and the Government of Korea (GOK). We released verification reports on November 13, 2019.[3] On October 10, 2019, Commerce postponed the final results of review by 57 days until January 10, 2020.[4] On December 2, 2019, Nucor, POSCO, and the GOK submitted timely case briefs.[5] Nucor and POSCO also submitted timely rebuttal briefs on December 9, 2019.[6]

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; 2017,* 84 FR 34123 (July 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Nucor's Letter, ''Comments Regarding Verification of POSCO's Questionnaire Responses,'' dated September 18, 2019.

[3] *See* Memoranda, ''Verification of the Questionnaire Reponses of POSCO'' and ''Verification of the Questionnaire Responses of the Government of the Republic of Korea,'' dated November 13, 2019.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated October 10, 2019.

[5] *See* Nucor's Letter, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief,'' dated December 2, 2019; POSCO's Letter, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C–580–888: POSCO's Case Brief,'' dated December 2, 2019; and GOK's Letter, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, 04/04/2017–12/31/2017 Administrative Review, Case No. C–580–888: Case Brief of the Government of Korea,'' dated December 2, 2019.

[6] *See* Nucor's Letter, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief,'' dated December 9, 2019; and POSCO's Letter, ''Certain Carbon and Alloy Steel

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from the Republic of Korea. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

A full description of the scope of the order is contained in the Issues and Decision Memorandum, which is hereby adopted by this notice.[7]

Analysis of Comments Received

All issues raised in interested parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *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 Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we made changes to the net subsidy rate calculated for the mandatory respondent. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Partial Rescission of Administrative Review

In the *Preliminary Results,* Commerce announced its intent to rescind the review of Hyundai Steel Company (Hyundai) based on Hyundai's certified claim of no shipments of subject merchandise during the POI, as confirmed with U.S. Customs and Border Protection (CBP).[9] No interested party submitted comments on Commerce's intent to rescind the review of Hyundai. Because there is no evidence on the record to indicate that Hyundai had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding the administrative review of Hyundai pursuant to 19 CFR 351.213(d)(3).[10]

Companies Not Selected for Individual Review

Commerce calculated an individual estimated net countervailable subsidy rate for POSCO, the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely under section 776 of the Act, the estimated net countervailable subsidy rate calculated for POSCO is the rate assigned to all other producers and exporters not selected for individual review. This is consistent with the methodology used in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

We determine that, for the period of April 4, 2017 through December 31, 2017, the following total net countervailable subsidy rates exist:

Company	Net countervailable subsidy rate (percent *ad valorem*)
POSCO[11]	0.50
BDP International	0.50
Blue Track Equipment	0.50
Boxco	0.50
Bukook Steel Co., Ltd	0.50
Buma CE Co., Ltd	0.50
Daelim Industrial Co., Ltd	0.50
Daesam Industrial Co., Ltd	0.50
Daesin Lighting Co., Ltd	0.50
Daewoo International Corp	0.50
Dong Yang Steel Pipe	0.50
Dongkuk Industries Co., Ltd	0.50
Dongkuk Steel Mill Co., Ltd	0.50
Dongbu Steel Co., Ltd	0.50
EAE Automotive Equipment	0.50
EEW KHPC Co., Ltd	0.50
Eplus Expo Inc	0.50
GS Global Corp	0.50
Haem Co., Ltd	0.50

Cut-to-Length Plate from the Republic of Korea, Case No. C–580–888: POSCO's Rebuttal Brief,'' dated December 9, 2019.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; 2017,'' dated concurrently with this notice (Issues and Decision Memorandum).

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See Preliminary Results,* 84 FR at 34124; and PDM at 4.

[10] *See* Issues and Decision Memorandum for further discussion.

Company	Net countervailable subsidy rate (percent *ad valorem*)
Han Young Industries	0.50
Hyosung Corp	0.50
Jinmyung Frictech Co., Ltd	0.50
Korean Iron and Steel Co., Ltd	0.50
Kyoungil Precision Co., Ltd	0.50
Samsun C&T Corp	0.50
SK Netwoks Co., Ltd	0.50
Steel N People Ltd	0.50
Summit Industry	0.50
Sungjin Co., Ltd	0.50
Young Sun Steel	0.50

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to CBP 15 days after publication of the final results of this review. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse for consumption, from April 4, 2017 through December 31, 2017, at the *ad valorem* rates listed.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed in these final results will be equal to the subsidy rates established in the final results of this review; (2) for all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[11] Commerce has determined the following companies to be cross-owned with POSCO: POSCO Chemtech, POSCO Nippon RHF Joint Venture Co., Ltd., POSCO Processing & Service, Pohang Scrap Recycling Distribution Center, and POSCO M-Tech. *See Preliminary Results,* 84 FR at 34124; and PDM at 11.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: January 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–00644 Filed 1–15–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 16, 2020.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period April 1, 2019 through June 30, 2019. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on December 17, 2019.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between April 1, 2019 through June 30, 2019.

Scope Rulings Made April 1, 2019 Through June 30, 2019

Brazil

A–351–849; A–580–890; A–201–848 and A–455–805: Emulsion Styrene-Butadiene Rubber From Brazil, Korea, Mexico and Poland

Requester: Hankook Tire America Corp. SSBR–F3626A is not covered by

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 84 FR 68877 (Dec. 17, 2019).

the scope of the antidumping duty orders on Emulsion Styrene-Butadiene Rubber from Brazil, Korea, Mexico and Poland because SSBR–F3626A is not an emulsion-based rubber; it is a solution-based rubber; April 17, 2019.

Italy

A–475–834: Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy

Requestor: Provident, LLC. Cold-rolled steel strip in coils used to produce ''doctor blades'' are not covered by the scope of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Italy because they are neither hot-rolled nor forged, and they are in coil form; June 27, 2019.

People's Republic of China

A–570–875: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China

Requestor: Westinghouse Air Brake Technologies Corporation (Webtec); Webtec's branch pipe tee is outside the scope of the order because its branch pipe tee does not meet the ITC definition of pipe fittings. It is a functioning manifold in an assembly that regulates air flow to operate a railway car emergency braking system; thus, its branch pipe tee does not have the same physical characteristics as the products subject to the scope of the order; April 1, 2019.

A–570–064; C–570–065; A–533–877; C–533–878: Stainless Steel Flanges From the People's Republic of China and India

Requestor: EN Corporation (ENC). ENC's stainless steel flanges that are forged in China and India but finished in the Philippines are within the scope of the order, based on the plain language of the scope; April 1, 2019.

A–570–910 and C–570–911: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China

Requestor: NEXTracker, Inc. NT Torque Tubes are not covered by the scope of the antidumping and countervailing duty orders on circular welded carbon quality steel pipe from China because they are mechanical tubing which is excluded from the scope of these orders; April 5, 2019.

A–570–900: Diamond Sawblades and Parts Thereof From the People's Republic of China

Requestor: Stanley Black and Decker Inc. (Stanley); finished polycrystalline diamond (PCD) tipped sawblades (part numbers: DWA3193PCD, DWA412PCD, 4935473, 4935624, 4935625) imported from China are outside the scope of the antidumping duty order; April 18, 2019.

A–570–924: Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China

Requestor: ACCO Brands USA LLC. Overhead transparencies with a paper strip that have been made from PET film and that have a roughened surface layer created by corona treatment, are covered by the scope of the order because the additional manufacturing process required to affix a strip of paper to the overhead transparency does not result in an article of commerce entirely different from the ACCO overhead transparency Commerce previously found to be within the scope of the order, nor does it mean that the product is no longer a sheet of PET film; April 26, 2019.

A–570–910 and C–570–911: Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China

Requestor: Kichler Lighting LLC. Fan and light downrods used to suspend lights and/or fans from a ceiling imported by Kichler are covered by the scope of the antidumping and countervailing duty orders on circular welded carbon-quality steel pipe from China; May 16, 2019.

A–570–601: Tapered Roller Bearings From the People's Republic of China

Requestor: Bourgault Industries; Based on our analysis of the scope language of the order, the sources described in 19 CFR 351.225(k)(1), and the comments received, we determine that Bourgault's coulter disc hubs are covered by the scope of the order; June 3, 3019.

A–570–922 and C–570–923: Raw Flexible Magnets From the People's Republic of China

Requestor: Magnetic Building Solutions' (MBS); Printed magnetic underlays imported by MBS, identified by product codes 867102000402 (SKU MBU100R100), 867102000426 (SKU MBU100S004PS), and 867102000457 (SKU MBU050S004PS) are excluded from the scope of the orders, because they meet the printed magnet exclusion. Specifically, MBS's underlays are permanently bonded to paper that consists of text and an image. The printed material constitutes a decorative motif and does not fall under any of the exceptions to the exclusion; June 19, 2019.

Republic of Korea

A–580–874; A–557–816; A–523–808; A–583–854; A–552–818; C–552–819: Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam and Countervailing Duty Order on Certain Steel Nails From the Socialist Republic of Vietnam (Orders)

Requestor: Magnum Tool Corporation; Steel to Wood roofing nails are covered by the scope of the Orders because the physical description and information provided by Magnum demonstrate the steel to wood roofing nails fall within the plain language of the scope of the Orders; April 1, 2019.

Changed Circumstances Reviews Made April 1, 2019 Through June 30, 2019

Republic of Korea

A–580–891: Carbon and Alloy Steel Wire Rod From the Republic of Korea

Requestor: Six members of the domestic industry, including the petitioners from the underlying investigation (Nucor Corporation, Optimus Steel LLC (formerly, Gerdau Ameristeel US Inc), Keystone Consolidates Industries, Inc., and Charter Steel). Grade 1078 and higher tire cord wire rod are not covered by the scope of the antidumping duty order on carbon and alloy steel wire rod from the Republic of Korea because producers accounting for substantially all of the production of the domestic like product have no further interest in the order with respect to grade 1078 and higher tire cord wire rod; April 3, 2019.

United Kingdom

A–412–826: Carbon and Alloy Steel Wire Rod From the United Kingdom

Requestor: Six members of the domestic industry, including the petitioners from the underlying investigation (Nucor Corporation, Optimus Steel LLC (formerly, Gerdau Ameristeel US Inc), Keystone Consolidates Industries, Inc., and Charter Steel). Grade 1078 and higher tire cord wire rod are not covered by the scope of the antidumping duty order on carbon and alloy steel wire rod from the United Kingdom because producers accounting for substantially all of the production of the domestic like product have no further interest in the order with respect to grade 1078 and higher tire cord wire rod; April 3, 2019.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations

made during the period April 1, 2019 through June 30, 2019. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: January 9, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–00637 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 12, 2019, the Department of Commerce (Commerce) published the preliminary results of the antidumping duty administrative review of certain pasta (pasta) from Italy. The period of review (POR) is July 1, 2017 through June 30, 2018. As a result of our analysis of the comments and information received, these final results differ from the *Preliminary Results* with respect to Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara) and Industria Alimentare Colavita S.p.A. (Indalco). For the final weighted-average dumping margins, *see* the ''Final Results of Review'' section.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (Ghigi/Zara) or George McMahon (Indalco), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2019, Commerce published the *Preliminary Results.*[1] In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our *Preliminary Results.* On October 23 and October 24, 2019, we received case briefs from the Domestic Producers,[2] Ghigi/Zara, Agritalia S.r.L. and Tesa S.r.L.[3] On October 31, 2019, we received rebuttal briefs from the Domestic Producers and Indalco.[4] On December 3, 2019, Commerce held a public hearing at the joint request of Ghigi/Zara, Agritalia, and Tesa.[5]

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta.[6] The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have recalculated the weighted-average dumping margin for both Ghigi/Zara and Indalco.[7] As a result of the recalculation of the rates for Ghigi/Zara and Indalco, the weighted-average dumping margin for each of the non-selected companies has changed.

Final Results of the Review

As a result of this review, Commerce calculated weighted-average dumping margins that are above *de minimis* for Ghigi/Zara and Indalco for the period July 1, 2017 through June 30, 2018. Therefore, in accordance with section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), Commerce assigned an average of the weighted-average dumping margins calculated for Ghigi/Zara and Indalco to the two non-selected companies[8] in these final results, as referenced below.

Producer or exporter	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.p.A	91.76
Industria Alimentare Colavita S.p.A	0.50
Agritalia S.r.L	44.56
Tesa SrL (Tesa)	44.56

Duty Assessment

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. For an individually-examined respondent whose weighted-average dumping margin is not zero or a *de minimis* margin (*i.e.,* less than 0.50 percent), we calculated importer-

[1] *See Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 48114 (September 12, 2019) *(Preliminary Results),* and accompanying Preliminary Decision Memorandum.

[2] The domestic producers are: Dakota Growers Pasta Company, Riviana Foods and Treehouse Foods (collectively, Domestic Producers).

[3] *See* Domestic Producers' Letters, ''Petitioners' Case Brief for Ghigi 1870 S.p.A/Pasta Zara S.p.A,'' dated October 24, 2019, and ''Petitioners' Case Brief for Industria Alimentare Colavita S.p.A.,'' dated October 24, 2019; *see also* Ghigi/Zara's Letter, ''Pasta from Italy; Ghigi/Zara case brief,'' dated October 23, 2019, Agritalia S.r.L's Letter from, ''Pasta from Italy; Agritalia case brief,'' dated October 23, 2019, and Tesa SrL's letter, ''Pasta from Italy; Tesa case brief,'' dated October 23, 2019.

[4] *See* Domestic Producers' Letters, ''Petitioners' Rebuttal Brief for Ghigi 1870 S.p.A/Pasta Zara S.p.A,'' dated October 31, 2019 and ''Petitioners' Rebuttal Brief for Agritalia S.r.L,'' dated October 31, 2019; *see also* Indalco's Letter, ''Certain Pasta From Italy: Rebuttal Brief of Indalco S.p.A,'' dated October 31, 2019.

[5] *See* Public Hearing Transcript, dated December 10, 2019.

[6] For a full description of the scope of the order, *see* the ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review on Certain Pasta from Italy; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Certain Pasta from Italy: Calculation Memorandum—Ghigi/Zara,'' dated concurrently with this notice; and Memorandum, ''Certain Pasta from Italy: Calculation Memorandum—Indalco,'' dated concurrently with this notice.

[8] The rate applied to the two non-selected companies is a weighted average based on the publicly-ranged U.S. volumes of the two examined companies with weighted-average dumping margins that are not zero or *de minimis,* for the period July 1, 2017 through June 30, 2018. *See* Memorandum, ''Certain Pasta from Italy: Weighted-Average Dumping Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if an importer-specific assessment rate calculated in the final results is not zero or *de minimis,* Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the less-than-fair-value investigation as modified by the section 129 determination.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: January 10, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

[FR Doc. 2020–00640 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that the producers/exporters subject to this review made sales of subject merchandise in the United States at less than normal value during the period of review (POR) May 1, 2017 through April 30, 2018.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2019, Commerce published the *Preliminary Results* of the 2017–2018 administrative review of the antidumping duty order on welded carbon steel standard pipes and tubes (pipe and tube) from India.[1] The administrative review covers 27 producers or exporters of the subject merchandise. We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.[2] On October 24, 2019, Commerce extended the deadline for the final results by 57 days to January 9, 2020.[3]

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is pipe and tube. The pipe and tube subject to the order is currently classifiable under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and ACCESS is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content. A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice.

Changes Since the Preliminary Results

Based on the comments received we made changes for these final results which are enumerated in the Issues and Decision Memorandum.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exist for the period May 1, 2017 through April 30, 2018.

Producer or exporter	Weighted-average dumping margin (percent)
Apl Apollo Tubes Limited	87.39
Garg Tube Export LLP and Garg Tube Limited (collectively Garg Tube)	11.83
Asian Contec Ltd	11.83
Bhandari Foils & Tubes Ltd	11.83
Bhushan Steel Ltd	11.83
Blue Moon Logistics Pvt. Ltd	11.83
CH Robinson Worldwide	11.83
Ess-Kay Engineers	11.83
Manushi Enterprise	11.83
Nishi Boring Corporation	11.83
Fiber Tech Composite Pvt. Ltd	11.83
GCL Private Limited	11.83
Goodluck India Ltd	11.83
GVN Fuels Ltd	11.83
Hydromatik	11.83
Jindal Quality Tubular Ltd	11.83
KLT Automatic & Tubular Products Ltd	11.83
Lloyds Line Pipes Ltd	11.83
MARINEtrans India Private Ltd	11.83
Patton International Ltd	11.83
SAR Transport Systems Pvt. Ltd	11.83
Surya Global Steel Tubes Ltd	11.83
Surya Roshni Ltd	11.83
Welspun India Ltd	11.83
Zenith Birla (India) Ltd	11.83
Zenith Birla Steels Private Ltd	11.83
Zenith Dyeintermediates Ltd	11.83

[1] *See Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 33916 (July 16, 2019) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Independence Tube Corporation and Southland Tube, Incorporated's (collectively, the domestic interested parties (*i.e.,* DIPs)) Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Case Brief,'' dated August 27, 2019; *see also* Garg Tube Export LLP and Garg Tube Limited's (collectively, Garg Tube) Letter, ''Garg Tube's Administrative Case Brief: Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India,'' dated August 27, 2019; DIPs' Letter, ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Rebuttal Brief,'' dated September 3, 2019; and Garg Tube's Letter, ''Garg Tube's Rebuttal Brief: Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India,'' dated September 3, 2019.

[3] *See* Memorandum, ''Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated October 24, 2019.

[4] *See* Memorandum, ''Welded Carbon Steel Standard Pipes and Tubes from India: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2017/18'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

Disclosure

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days after the date of publication of the final results, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Garg Tube, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[5] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without reference to antidumping duties. For entries of Garg Tube's merchandise during the period of review for which it did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For Apl Apollo Tubes Limited [6] and the 25 companies which were not selected for individual examination,[7] we will instruct CBP to assess antidumping duties at a rate equal to each company's weighted-average dumping margin in these final results of review.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8]

We intend to issue liquidation instructions to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of pipe and tube from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 7.08 percent, the all-others rate established in the less-than-fair-value investigation for this proceeding.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–00641 Filed 1–15–20; 8:45 am]

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[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[6] The rate for this company was determined on the basis of facts otherwise available with an adverse inference. S*ee* Preliminary Decision Memorandum, section ''Application of Facts Available with an Adverse Inference,'' uncontested and unchanged in these final results.

[7] These companies are Asian Contec Ltd., Bhandari Foils & Tubes Ltd., Bhushan Steel Ltd., Blue Moon Logistics Pvt. Ltd., CH Robinson Worldwide, Ess-Kay Engineers, Manushi Enterprise, Nishi Boring Corporation, Fiber Tech Composite Pvt. Ltd., GCL Private Limited, Goodluck India Ltd., GVN Fuels Ltd., Hydromatik, Jindal Quality Tubular Ltd., KLT Automatic & Tubular Products Ltd., Lloyds Line Pipes Ltd., MARINEtrans India Private Ltd., Patton International Ltd., SAR Transport Systems Pvt. Ltd., Surya Global Steel Tubes Ltd., Surya Roshni Ltd., Welspun India Ltd., Zenith Birla (India) Ltd., Zenith Birla Steels Private Ltd., and Zenith Dyeintermediates Ltd.

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that PT. Cheil Jedang Indonesia (CJ Indonesia), the sole producer or exporter subject to this administrative review, did not make sales below normal value of monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia) during the period of review

(POR), November 1, 2017 through October 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, 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) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on MSG from Indonesia covering the sole respondent, CJ Indonesia.[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as the appendix to this notice.

On September 3, 2019, we extended the deadline for these preliminary results until December 10, 2019.[3] On December 2, 2019, we further extended the deadline for these preliminary results until no later than January 9, 2020.[4]

Scope of the Order

The merchandise covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this order when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Constructed export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying Commerce's preliminary results, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B–8024 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/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period November 1, 2017 through October 31, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
PT. Cheil Jedang Indonesia	0.00 (*de minimis*).

Assessment Rate

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for CJ Indonesia is not zero or *de minimis* (*i.e.,* less than 0.5 percent), then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin for CJ Indonesia is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by CJ Indonesia for which CJ Indonesia did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[5] if there is no rate for the intermediate company(ies) involved in the transaction.[6] The final results of this review shall be the basis for the assessment of antidumping duties on entries of subject merchandise covered by the final results of this review, where applicable. We intend to issue assessment instructions to CBP 15 days after the publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for CJ Indonesia will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in a completed segment for the most recent period of review; (3) if the exporter is not a firm covered in this review or in the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Monosodium Glutamate from the Republic of Indonesia; Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 3, 2019.

[4] *See* Memorandum, ''Monosodium Glutamate from the Republic of Indonesia; Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated December 2, 2019.

[5] *See Monosodium Glutamate From the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value,* 79 FR 58329 (September 29, 2014) (*MSG Investigation Final Determination*).

[6] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice in the **Federal Register**.[8]

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[10] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline.

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 within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, parties will be notified of the time and date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of each of the issues raised in written briefs, not later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Normal Value
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2020–00645 Filed 1–15–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea). The period of review (POR) is November 1, 2017 through October 31, 2018. Commerce preliminarily determines that the producers/exporters subject to this review made sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Justin Neuman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2019, Commerce initiated the administrative review of the antidumping duty order on CWP from Korea in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] This review covers 25 companies,[2] including mandatory respondents Husteel Co., Ltd. (Husteel) and Nexteel Co., Ltd. (Nexteel).[3] The remaining 23 companies were not selected for individual examination and remain subject to this administrative review. Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019, resulting in a revised deadline for these preliminary results.[4] Additionally, Commerce extended the deadline for the preliminary results until January 9, 2020.[5]

Scope of the Order

The merchandise subject to the order is circular welded non-alloy steel pipe and tube. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is

[7] *See MSG Investigation Final Determination.*

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[2] *Id.* at 2161–2162.

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Respondent Selection Memorandum'', dated March 25, 2019.

[4] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] *See* Memorandum, ''Circular Welded Non-Alloy Steel Pipe from Republic of Korea: Extension of Deadline for Preliminary Results of 2017–2018 Antidumping Administrative Review,'' dated August 27, 2019.

contained in the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 is available at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for Husteel and Nexteel that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, we have preliminarily assigned to the companies not individually examined in this review a margin of 23.74 percent, which is the weighted-average of the antidumping duty margins calculated using the public ranged sales data of Husteel and Nexteel.[7]

Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period November 1, 2017 through October 31, 2018:

Producer and/or exporter	Weighted-average dumping margin (percent)
Aju Besteel	23.74
Bookook Steel	23.74
Chang Won Bending	23.74
Dae Ryung	23.74
Daewoo Shipbuilding & Marine Engineering (Dsme)	23.74
Daiduck Piping	23.74
Dong Yang Steel Pipe	23.74
Dongbu Steel	23.74
Eew Korea Company	23.74
Histeel	23.74
Husteel Co., Ltd	5.11
Hyundai Rb	23.74
Hyundai Steel (Pipe Division)	23.74
Hyundai Steel Company	23.74
Kiduck Industries	23.74
Kum Kang Kind	23.74
Kumsoo Connecting	23.74
Miju Steel Manufacturing	23.74
Nexteel Co., Ltd	31.64
Samkang M&T	23.74
Seah Fs	23.74
Seah Steel	23.74
Steel Flower	23.74
Vesta Co., Ltd	23.74
Yep Co	23.74

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[10] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. If Husteel or Nexteel's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[11]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Husteel or Nexteel for which it did not know that the

[6] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2017–2018,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[7] For a full description of the rate for non-examined companies, *see* Preliminary Decision Memorandum; *see also* Memorandum, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Calculation of the Margin for Respondents Not Selected for Individual Examination,'' dated January 9, 2020.

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

[11] *See* section 751(a)(2)(C) of the Act.

merchandise was destined to the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[12]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent,[13] the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: January 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–00642 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–DS–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.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tilefish Individual Fishing Quota Program.

OMB Control Number: 0648–0590.

Form Number(s): None.

Type of Request: Regular (extension, without change, of a currently approved collection).

Number of Respondents: 12.

Average Hours per Response: IFQ Allocation Permit—30 minutes; IFQ Allocation Interest Declaration and IFQ Transfer forms—5 minutes each; Fees and Cost Recovery—1 minute.

Burden Hours: 20.5.

Needs and Uses: NOAA Fisheries needs to administer and monitor the Tilefish Individual Fishing Quota (IFQ) Program to ensure the fishery can achieve optimum yield while avoiding overfishing. To administer the IFQ program, the agency issues annual IFQ Allocation permits. These permits are needed to inform allocation holders of their annual catch quota and for enforcement purposes to ensure vessels do not exceed an individual quota allocation. To achieve its objectives, it is essential that an IFQ program allow the free transfer of quota shares. In order to process an IFQ transfer (temporary or permanent), NMFS requires that an IFQ Allocation permit holder submit an IFQ transfer form. When the Mid-Atlantic Fishery Management Council established the Tilefish IFQ Program, it included a provision that no person, corporation, or other entity may hold more that 49 percent of the total tilefish IFQ allocation. In order to monitor this cap, IFQ Allocation permit holders must disclose their ownership interest in any other holder of IFQ allocation annually, prior to receiving their annual permit. In addition to other provisions, the Magnuson-Stevens Fishery Conservation and Management Act requires NOAA Fisheries to collect fees to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs.

Affected Public: Individuals or households and Business or other for-profit.

Frequency: Annually and as requested.

Respondent's Obligation: Required to obtain or retain benefits.

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00602 Filed 1–15–20; 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.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Dealer and Interview Family of Forms.

OMB Control Number: 0648–0013.

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a currently approved collection).

Number of Respondents: 6,188.

Average Hours per Response: Shrimp Interviews, Vessel Trip interviews, USVI Trip interviews, South Carolina Coastal Fisheries Dealer Reporting, and Mackerel Gillnet Reporting, 10 minutes; Wreckfish Dealer Reporting, 13 minutes; Coastal Fisheries electronic dealer reporting, 1 minute.

Burden Hours: 4,805.

Needs and Uses: Fishery quotas are established for many species in the fishery management plans developed by the Gulf of Mexico Reef Fish Fishery Management Council, the South Atlantic Fishery Management Council, and The Caribbean Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*e.g.,* lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is weekly. Daily reporting is only used for one fishery.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location, and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region and commercial fisheries of the US Caribbean. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

Anticipated changes in burden hours and respondents are driven by the number of fishing trips made by the fisherman each year. Seasonal differences are always noticed because many factors such as weather, fuel cost, dock side fish prices, fish migration patterns, the number of fisherman with active permits, and seasonal closures can influence how many fishing trip take place annually.

The following individual collections are removed as they are now included in the Coastal Fisheries Dealer Reporting: Vessel Operational Unit Inventory; Coral Dealer Reporting; and South Atlantic Snapper-grouper, Rock Shrimp, Golden Crab, and Dolphin/Wahoo Dealer Reporting; and Gulf and South Atlantic Coastal Migratory Pelagics and Spiny Lobster Dealer Reporting.

This data collection is authorized under 50 CFR part 622.5.

Affected Public: Small business or other for-profit organizations; individuals or Households with federal fishing permits.

Frequency: Per fishing trip.

Respondent's Obligation: Mandatory.

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00601 Filed 1–15–20; 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.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region, Pacific Coast Groundfish Fishery: Trawl Rationalization Cost Recovery Program.

OMB Control Number: 0648–0663.

Form Number(s): None.

Type of Request: Regular submission (extension, without change, of a currently approved collection).

Number of Respondents: 166.

Average Hours per Response: Cost recovery forms (online fee payments): 1 hour; Annual report: 1 hour; Failure to pay report: 4 hours.

Burden Hours: 1,874.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act authorizes and requires the collection of cost recovery fees for Limited Access Privilege Programs, such as the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Program). Cost recovery fees may not exceed three percent of the ex-vessel value and must recover costs associated with the management, data collection and analysis, and enforcement of these programs. The Trawl Program's cost recovery program requires fish sellers to submit fees to fish buyers who then submit those fees to NOAA's National Marine Fisheries Service (NMFS). Fish buyers must also submit information to NMFS on the volume and value of harvested groundfish when submitting the fees. Information is collected from monthly and annual reports as well as non-payment documents when necessary.

This program is authorized under the Pacific coast groundfish fishery regulations, trawl rationalization cost recovery program at 50 CFR 660.115.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: Monthly (online fee payments), annually (annual reports), occasionally (failure to pay reports).

Respondent's Obligation: Mandatory.

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,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00603 Filed 1–15–20; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 15, 2020; 1:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matter: Staff will brief the Commission on the status of compliance programs.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of

* The Commission unanimously determined by recorded vote that Agency business requires calling the meeting without seven calendar days advance public notice.

the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: January 13, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–00710 Filed 1–14–20; 11:15 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of a modified System of Records.

SUMMARY: The Corporation for National and Community Service (CNCS) proposes to modify *Office of the Inspector General Investigative Files—Corporation-15,* last published on January 30, 2002 (67 FR 4395, 4407), to include substantive changes and modifications described in detail in the supplementary section. The primary purpose of the system is to enable the CNCS Office of Inspector General (CNCS–OIG) to carry out its responsibilities under the Inspector General Act of 1978, as amended, including its responsibility to conduct and supervise investigations relating to programs and operations of CNCS.

DATES: Interested persons may submit comments until February 18, 2020. The system of Records Notice (SORN) will be effective February 18, 2020 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, by any of the following methods:

(1) Electronically through *www.regulations.gov.*

Once you access *www.regulations.gov,* locate the web page for this SORN by searching for *CNCS–03–OIG–Investigative Files.* If you upload any files, please make sure they include your first name, last name, and the name of the proposed SORN.

(2) By email at *feedback@CNCSOIG.gov.*

(3) By mail: Corporation for National and Community Service, Attn: Office of Inspector General, 250 E St. SW, Suite 400, Washington, DC 20525.

(4) By hand delivery or by courier to CNCS–OIG at the mail address given in paragraph (3) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments received generally will be posted without change to *www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: If you have general questions about a system of record, please email *privacy@cns.gov* or use the mailing address (3) identified above. Please include the system of record's name and number.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify CNCS–OIG's records system by changing the name of the system from *Office of the Inspector General Investigative Files—Corporation-15* to *CNCS–03–OIG–Investigative Files,* adding new routine uses, revising several existing routine uses, and eliminating routine uses that were duplicative. The substantive changes and modifications to the currently published version of Office of the Inspector General Investigative Files—Corporation-15 include:

- Renaming the SORN as *CNCS–03–OIG–Investigative Files;*
- Replacing all prior routine uses with nineteen new and modified routine uses that are specific to this SORN;
- Creating a method for disclosures to prevent or respond to a suspected or confirmed data breach and disclosures during a records management inspection;
- Enabling CNCS–OIG to release information to the public when: (a) The matter under investigation has become public knowledge because information about it is publicly available, (b) CNCS–OIG or a designee determines that such disclosure is necessary to preserve confidence in the integrity of CNCS–OIG investigative process, or (c) to demonstrate the accountability of CNCS employees or other individuals covered by the system;
- Addressing limited disclosures—to complainants, victims, and witnesses—in situations not covered by routine use 18, and consistent with uses promulgated by other Federal OIGs; and,
- Informing individuals that they can request updates and amendments to their records via email or facsimile and what they should include in that inquiry to receive prompt service.

These changes not only advance overall transparency, but also, by keeping complainants and victims informed about cases in which they are involved, will encourage individuals to come forward and to cooperate in future investigations. Providing witnesses with records they initially produced, or which contain their own statements or testimony, will, for example, assist the Federal government in ongoing legal proceedings concerning the matters investigated. These changes also represent a balance between privacy interests and the public's interest in transparency. Disclosure of names in certain circumstances will help deter misconduct involving CNCS and/or its funded activities.

For ease of reference, CNCS is republishing the Office of Inspector General records system in its entirety.

SYSTEM NAME AND NUMBER:

CNCS–03–OIG–Investigative Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Corporation for National and Community Service, 250 E St. SW, Suite 400, Washington, DC 20525.

SYSTEM MANAGER(S):

Inspector General, Office of Inspector General, Corporation for National and Community Service, 250 E St. SW, Suite 400, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) and The National and Community Service Trust Act of 1993 (42 U.S. Code Chapter 129).

PURPOSE(S) OF THE SYSTEM:

The Corporation for National and Community Service (CNCS) Office of Inspector General (CNCS–OIG) uses the system to track and maintain the files acquired and developed when CNCS–OIG investigates individuals associated with a CNCS program or operation pursuant to the Inspector General Act of 1978, as amended. CNCS–OIG is statutorily directed to conduct and supervise investigations relating to CNCS programs and operations to promote economy, efficiency and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records in the system are used to investigate individuals and entities suspected of having committed illegal or improper acts and to conduct criminal prosecutions, civil proceedings, and administrative actions against those individuals and entities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with CNCS–OIG's investigative duties, the system maintains records on the following categories of individuals:

- Individuals or entities that are or have been the subject of inquiries or investigations conducted by CNCS–OIG. These include current and former employees of CNCS, and current and former contractors (or applicants for contracts), subcontractors, consultants, or the recipients of (or applicants for) CNCS grants, subgrants, or cooperative agreements, and their current or former employees; and,
- Individuals who are witnesses, complainants, confidential or nonconfidential informants, and other parties who have been identified by CNCS–OIG (on the basis of information received or developed by CNCS–OIG) as potentially possessing information relevant to an investigation under CNCS–OIG's jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system include:

- Letters, memoranda, hotline forms, and other documents describing complaints or alleged criminal, civil, or administrative misconduct;
- Investigative files such as statements, affidavits, subpoenas, analyses, and records obtained during the investigation; and,
- Final reports on the investigation and any related exhibits, which may include information about any follow-up actions.

RECORD SOURCE CATEGORIES:

The subjects of investigations, and individuals with whom the subjects of investigations are associated, such as:

- Current and former CNCS employees;
- Current and former employees of grantees, contractors and subcontractors;
- Current and former National Service participants;
- Federal, state, local, and foreign law enforcement and non-law enforcement agencies;
- Members of the public;
- Witnesses;
- Confidential and nonconfidential informants; and
- Information gathered from public sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in the system may be disclosed to authorized entities, as is determined to be relevant and necessary, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. *To appropriate agencies, entities, and persons when:*

a. CNCS–OIG or CNCS suspects or has confirmed that there has been a breach of the system of records,

b. CNCS–OIG or CNCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, CNCS (including its information systems, programs, and operations), the Federal government, or national security, and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with CNCS–OIG's or CNCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. *To another Federal agency or Federal entity, when CNCS determines that information from the system of records is reasonably necessary to assist the recipient agency or entity in:*

a. Responding to a suspected or confirmed breach; or

b. Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. *To National Archives and Records Administration.* A record may be disclosed during a records management inspection conducted under 44 U.S.C. 2906, and for mediation services to resolve disputes under 5 U.S.C. 552(h)(2).

4. *To Federal, State, Local, or Foreign Investigative or Prosecutorial Authorities.* A record which indicates either by itself or in combination with other information within CNCS–OIG's possession, a violation or potential violation of law, whether civil, criminal or regulatory, may be disclosed, as a routine use, to the appropriate Federal, foreign, state or local agency or professional or licensing organization charged with the responsibility of investigating, enforcing, or prosecuting such violation.

5. *For Certain Disclosures to Other Federal Agencies*—To a Federal agency, in connection with the hiring or retention of an employee; the conducting of a suitability or security investigation of an individual and issuance of a security clearance; the classification of jobs; the procurement of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. *To the Equal Employment Opportunity Commission*—When requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

7. *To the Office of the President, or a Member of Congress or His or Her Staff*—In response to a request made on behalf of and at the request of the individual who is the subject of the record, when the Office of the President or the member of Congress has shown the appropriate official that the individual to whom the record pertains has authorized the Office of the President or the member of Congress to have access.

8. *To a Federal or State Grand Jury.* Pursuant to a Federal or state grand jury subpoena, or prosecution request, a record may be disclosed for the purpose of its introduction to a grand jury.

9. *To a Contractor, Grantee, Subgrantee or Other Recipient of Federal Funds.* A record may be disclosed when the record reflects serious inadequacies with the award recipient's personnel, and disclosure of the record is for the purpose of permitting the award recipient to effect corrective action in the government's best interest.

10. *To Outside Entities During an Investigation or Audit.* A record may be disclosed to any source, either private or governmental, to the extent necessary to secure from such source information relevant to, and sought in furtherance of, an OIG investigation, audit, or evaluation.

11. *To a Government Agency Pursuant to a Bid Protest.* A record may be disclosed to a Board of Contract Appeals, the General Accounting Office, or other tribunal hearing a bid protest involving a CNCS or CNCS–OIG procurement.

12. *To the U.S. Department of Justice (DOJ) for a Freedom of Information Act or Privacy Act Consultation.* A record may be disclosed in order to obtain DOJ's advice regarding CNCS–OIG's obligations under the Freedom of Information Act or Privacy Act.

13. *To the White House Office of Management and Budget (OMB) for a Privacy Act Consultation.* A record may

be disclosed in order to obtain OMB's advice regarding CNCS–OIG's obligations under the Privacy Act.

14. *To Federal Agencies for Tax Records.* A record may be disclosed to the U.S. Department of the Treasury or DOJ when CNCS or CNCS–OIG is seeking to obtain taxpayer information from the Internal Revenue Service.

15. *To a Consumer Reporting Agency.* A record may be disclosed to a ''consumer reporting agency'' as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)), in order to obtain information in the course of an investigation or audit.

16. *To a Government Agency under a Computer Matching Program.* A record may be disclosed to a Federal, state, or local agency for use in computer matching programs to prevent and detect fraud and abuse in benefit or other programs, to support civil and criminal law enforcement activities of those agencies and their components, and to collect debts and overpayments owed to those agencies and their components.

17. *For Litigation and Mediation Purposes.* A record may be disclosed to DOJ or a state or local prosecutor, in a proceeding before a court, adjudicative body, or mediation service before which CNCS–OIG is authorized to appear, when—

a. CNCS–OIG, CNCS, or any component thereof;

b. Any employee of CNCS–OIG or CNCS in his or her official capacity;

c. Any employee of CNCS–OIG or CNCS in his or her individual capacity, where the government has agreed to represent the employee; or

d. The United States, where CNCS–OIG determines that the litigation is likely to affect CNCS–OIG, CNCS, or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by DOJ is deemed relevant and necessary to the litigation.

18. *For Certain Disclosures to the Public.* Unless CNCS–OIG or a designee determines that disclosure of the specific information, in the context of a particular case, would constitute an unwarranted invasion of personal privacy, a record may be disclosed to the public:

a. When the matter under investigation has become public knowledge because information about it is publicly available; or,

b. When CNCS–OIG or a designee determines that such disclosure is necessary to preserve confidence in the integrity of the CNCS–OIG investigative process; or

c. To demonstrate the accountability of CNCS–OIG or CNCS employees or other individuals covered by the system.

19. *To Sources of Investigations, Audits, and Inspections.* A record may be disclosed to:

a. Complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the results of the investigation or case arising from the matters about which they complained and/or with respect to which they were a victim; and,

b. An individual who has been interviewed or contacted by CNCS–OIG pursuant to an investigation, audit, or inspection, to the extent that CNCS–OIG may provide copies of that individual's statements, testimony, or records produced.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are stored in locked rooms, file cabinets, and desks. Electronic records and backups are stored on secure servers and encrypted media to include, but are not limited to, CNCS–OIG's computers and network drives.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Each CNCS–OIG investigation file is assigned a case number and all records related to a particular investigation are filed and retrieved by that case number. Records may also be retrieved by the name of the subjects, witnesses, and/or complainants.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Closed Investigation Files are retained for three years and then retired to the Federal Records Center and held for ten years after the fiscal year they were closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

- Access to the records is limited to authorized personnel who require the information to complete their assigned tasks and have been trained how to properly handle and safeguard the records.
- Electronic records are maintained in accordance with National Institute of Standards and Technology Special Publication 800–53 Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations or the updated equivalent.
- Paper records are maintained in locked rooms, file cabinets, and desks when not in use.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508, Implementation of the Privacy Act of 1974, individuals wishing to access their own records must contact the System Manager at the address listed above, state that they want access to their own records, and furnish his or her name, address, telephone number, and a copy of an identification card such as a driver's license.

CONTESTING RECORD PROCEDURES:

The major part of the system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that the system of records is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information. Individuals should also be prepared to confirm their identity as required by 45 CFR part 2508.

NOTIFICATION PROCEDURES:

To determine whether the system of records contains a record pertaining to the requesting individual, the individual should write to the System Manager at the address listed above. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508. Upon receipt, the System Manager will respond within 30 days in the same manner that the request was received *e.g.,* for a request received by email CNCS–OIG will provide notification via email.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

- Pursuant to, and limited by 5 U.S.C. 552a(j)(2) and 45 CFR 2508.19(a)(1), the system of records maintained by CNCS–OIG that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6)(7), (9), (10), and (11), and (I), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains information pertaining to criminal law enforcement investigations.
- Pursuant to, and limited by 5 U.S.C. 552a(k)(2) and 45 CFR 2508.19(a)(2), the system of records maintained by CNCS–OIG that contains the Investigative Files

shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains investigatory materials compiled for law enforcement purposes.

HISTORY:

64 FR 10879, 10890, March 5, 1999; 65 FR 46890, 46902, August 1, 2000; 67 FR 4395, 4407, January 30, 2002.

Dated: January 6, 2020.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2020–00581 Filed 1–15–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0008]

Proposed Collection; Comment Request

AGENCY: Office of Net Assessment, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Net Assessment announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 16, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Net Assessment, *jryseff@rand.org,* James Ryseff, 703–413–1100 ext 5717.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exploring Civil-Military Views Regarding AI and Related Technologies; OMB Control Number 0704–XXXX.

Needs and Uses: The U.S. Department of Defense (DoD) is requesting approval from the Office of Management and Budget (OMB) to conduct a survey with members of the software engineering community, employees of defense and aerospace companies, and the general public. The study will also conduct focus groups with members of the software engineering community and students from computer science programs. This project is funded by the U.S. Department of Defense, Joint Artificial Intelligence Center (JAIC). JAIC has contracted with the RAND Corporation, a non-profit research institute, to conduct this study. This data collection will help ensure DoD's ability to engage with leading private sector technology corporations and their employees.

Affected Public: Individual and households.

Annual Burden Hours: 1,390.

Number of Respondents: 5,210.

Responses per Respondent: 1.

Annual Responses: 5,210.

Average Burden per Response: 16 Minutes.

Frequency: On Occasion.

Dated: January 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00608 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0004]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency (NGA), Department of Defense (DoD).

ACTION: Rescindment of a System of Records notice.

SUMMARY: The NGA deactivated a System of Records, National Geospatial-Intelligence Agency Maritime Safety Office Metrics Database, NGA–005. This System of Records collected, used, maintained, and disseminated information to account for employees' daily time spent on tasks to provide performance measurements to senior leadership. This system was decommissioned in 2013 and all files were destroyed.

DATES: This System of Records rescindment is effective upon publication. This system was decommissioned on September 15, 2013.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the rescinded system, please contact Mr. Charles R. Melton, Chief FOIA, National Geospatial-Intelligence Agency, Security and Installation, Attn: FOIA Office, 7500 GEOINT Drive, Springfield, VA 22150–7500, or by phone at (571) 558–3715.

SUPPLEMENTARY INFORMATION: In Fiscal Year 2013, NGA Source Operations Directorate, Maritime Safety Office discontinued using this system to collect, use, maintain, and disseminate information to account for employees' daily time spent on each activity to provide performance measurements to senior leadership. The NGA Source Operations Directorate, Maritime Safety Office leadership discontinued collecting this information and destroyed all files in accordance with the policies and practices for retention and disposal of records as stated in the System of Records Notice in 2012.

The DoD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** section or at the Defense Privacy, Civil Liberties and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act of 1974, as amended, were submitted on November

14, 2019 to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER:

National Geospatial-Intelligence Agency Maritime Safety Office Metrics Database, NGA–005.

HISTORY:

June 20, 2012, 77 FR 37004.

Dated: January 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00567 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0006]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency (NGA), Department of Defense (DoD).

ACTION: Rescindment of a System of Records notice.

SUMMARY: The NGA is rescinding a System of Records, Classified Material Access Files, B0502–03–2. This System of Records maintained records of individuals' access to classified material by specific categories and for established purposes. All Classified Material Access Files records transitioned to the NGA Enterprise Workforce System (EWS), and are covered by NGA–003.

DATES: This System of Records rescindment is effective upon publication. The specific date for when this system ceased to be a Privacy Act System of Records is November 19, 2013 and the records transitioned to the NGA EWS.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the rescinded system, please contact Mr. Charles R. Melton, Chief FOIA, National Geospatial-Intelligence Agency, Security and Installation, Attn: FOIA Office, 7500 GEOINT Drive, Springfield, VA 22150–7500, or by phone at (571) 558–3715.

SUPPLEMENTARY INFORMATION: On November 19, 2013, the Office of the Secretary of Defense published a new System of Records, NGA EWS (November 19, 2013, 78 FR 69393). The EWS System of Records subsumed all NGA Classified Material Access Files.

The DoD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** section or at the Defense Privacy, Civil Liberties and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act of 1974, as amended, were submitted on November 26, 2019 to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and on February 5, 2019, to the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER:

Classified Material Access Files, B0502–03–2.

HISTORY:

February 22, 1993, 58 FR 10189.

Dated: January 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00582 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0005]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency (NGA), Department of Defense (DoD).

ACTION: Rescindment of a System of Records notice.

SUMMARY: The NGA is rescinding a System of Records, Record of Accounts Receivable, B0302–13. This System of Records maintained financial transaction records for contracts involving sales agents, contractors, and civilian employees. All records previously covered by the Record of Accounts Receivable have been destroyed.

DATES: This System of Records rescindment is effective upon publication. The specific date for when this system ceased to be a Privacy Act System of Records is May 1, 2013.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the rescinded system, please contact Mr. Charles R. Melton, Chief FOIA, National Geospatial-Intelligence Agency, Security and Installation, Attn: FOIA Office, 7500 GEOINT Drive, Springfield, VA 22150–7500, or by phone at (571) 558–3715.

SUPPLEMENTARY INFORMATION: This system was used to track financial transaction records for contracts involving sales agents, contractors, and civilian employees. All files were destroyed according to the policies and practices for retention and disposal as published in the System of Records Notice.

The DoD System of Records Notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** section or at the Defense Privacy, Civil Liberties and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act of 1974, as amended, were submitted on November 20, 2019 to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER:

Record of Accounts Receivable, B0302–13.

HISTORY:

February 22, 1993, 58 FR 10189.

Dated: January 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00571 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0003]

Proposed Collection; Comment Request

AGENCY: Office of the Chief Management Officer, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Chief Management Officer announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 16, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Chief Management Officer, 9010 Defense Pentagon, Washington, DC, Pamela Hull, (571) 256–4184.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: SCOOTER REGISTRATION FORM; SD Form 0836; OMB Control Number 0704–XXXX.

Needs and Uses: Washington Headquarters Services (WHS) needs to collect this information to be able to provide reasonable accommodations to WHS and WHS-serviced organizations' personnel needing mobility assistance for individuals with disabilities.

Affected Public: Individuals and Households.

Annual Burden Hours: 66.

Number of Respondents: 33.

Responses per Respondent: 1.

Annual Responses: 33.

Average Burden per Response: 2 Hours.

Frequency: On Occasion.

Dated: January 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00560 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0007]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of a modified System of Records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying a System of Records Notice (SORN), Security Assistance Network (SAN), DSCA 07. The SAN is an international security cooperation (SC) database and communications network that provides the Security Cooperation Offices (SCOs) and others in the SC community access to SC financial and logistics management systems, information via various bulletin boards, and a library system for sharing large document files. The SAN provides the primary interface for the input and output of data from all military departments, SCOs, and International Military Student Offices (IMSOs). Additionally, the SCO training manager obtains data used for the Security Cooperation Training Management System (SC–TMS) from SAN. All SCOs and IMSOs must use the SAN and its components to perform their assigned SC training management functions.

DATES: This System of Records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before February 18, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The OSD is modifying a System of Records subject to the Privacy Act of 1974, 5 U.S.C. 552a. This notice serves to update the SORN for SAN, DSCA 07, published in the **Federal Register** (FR) on September 22, 2016, Vol. 81, No. 184.

As a result of reviewing this SORN, the OSD is modifying this system by updating the categories of records, routine uses, contesting record procedures, and notification procedures for the application, Security Cooperation Workforce Development Database (SCWDD), including the format of the SORN to coincide with the new SORN template defined in Office of Management and Budget (OMB) Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

The OSD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the FR and are available from the address in the **FOR FURTHER INFORMATION CONTACT** section or at the Defense, Privacy, Civil Liberties and Transparency Division (DPCLTD) website at *https://dpcld.defense.gov.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 10, 2019 to the House Committee on Oversight and Reform, the Senate Committee on Governmental Affairs, and the OMB pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: January 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER

Security Assistance Network (SAN), DSCA 07.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Institute for Defense Analysis, 4850 Mark Center Drive, Alexandria, VA 22311–1882.

SYSTEM MANAGER(S):

SAN System Manager, Defense Institute of Security Cooperation Studies, 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641, email: *dsca.ncr.lmo.mbx.info@mail.mil.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 134, Under Secretary of Defense for Policy; 22 U.S.C. 39, Arms Export Control Act, Chapters 32 and Chapter 39; Department of Defense (DoD) Directive (DoDD) 5105.65, Defense Security Cooperation Agency (DSCA); DoDD 5101.1, DoD Executive Agent; DoDD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, Secretary of the Navy Instruction 4950.4B; Air Force Instruction 16–105, Joint Security Cooperation Education and Training; and DSCA Manual 5105.38–M, Security Assistance Management Manual (SAMM), Chapter 10, International Training.

PURPOSE(S) OF THE SYSTEM:

The SAN is a network used to exchange Security Cooperation (SC) personnel management, training, and budget information between overseas Security Cooperation Offices (SCOs), Geographical Combatant Commands, Military Departments, DSCA, Defense Finance and Accounting Services, DoD Schoolhouses, Regional Centers, and international host nation organizations.

The SAN hosts the Security Cooperation Training Management System (SC–TMS) which incorporates a set of tools used by the SC community to manage student training data, including the Security Cooperation Workforce Development Database (SCWDD) and International Affairs Certification Database (IACD), both of which track and provide the status of training for the SC workforce certification levels.

In addition, the SAN hosts the Security Assistance Automated Resource Management Suite and the Security Cooperation International Resource Management System, both of which are budget programs and do not collect personally identifiable information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian, military, contractor personnel (collectively, ''U.S. personnel''), and individuals with dual citizenship with the U.S. selected to attend DoD security cooperation training (collectively, ''Students'').

CATEGORIES OF RECORDS IN THE SYSTEM:

SC–TMS: Name and alias, full face photograph, gender, citizenship, nationality, date and place of birth, physical description, work or personal email addresses, work and home addresses, work and home telephone numbers, marital status, military rank and date of rank, branch of military service, identification and control numbers, clearance, passport and visa information, health information, lodging and travel information, emergency contact(s), language capabilities, educational and employment information, academic evaluation, religious affiliation, preferences (*i.e.,* food, entertainment, etc.), activity remarks, and dependency data (if accompanied); U.S. Personnel and Foreign Officials at Ministry of Defense: Name, organization, office telephone and fax numbers, point of contact function, and military rank.

SCWDD: U.S. personnel data: Name and alias, work email address and telephone number, DoD Common Access Card (CAC), DoD Identification Number (DoD ID Number), student identification number, military service, military rank, civilian grade, professional experience, specialized skills, education and training achieved, career field, military employment code, position/billet information, required personnel type, appointment authority and type, supervisory position, organization, unit identification code (UIC), data source of UIC, security cooperation training, experience and education required, source of training required, security cooperation activity category and function, contract labor hours, status of security cooperation training and international programs security requirements, rotation and report dates, replacement personnel information, other professional certification program information, remarks and comments.

IACD: Full name, home or work email and mailing addresses and telephone numbers, fax numbers, major command and mailing address, name of organization, office symbol/code, job title, job function, grade/rank, job series, military specialty, start date, total months in international affairs related work, billet information, current certification level, highest education completed, and field of study; supervisor information: First and last name, email address, organization, office symbol, work phone and fax number. SAN account holders: Name, DoD ID Number, user group number, organization, job title, office code, country/location code, status (*e.g.,* government employee (U.S. citizen), SAN affiliation-organization, responsibilities, work mailing and email addresses; DSN and fax numbers.

RECORD SOURCE CATEGORIES:

From the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3):

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the DoD when necessary to accomplish an agency function related to this System of Records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic storage media and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DoD ID Number, other identification and control numbers, or by the name of individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

SC–TMS: Destroy five years after completion of a specific training program.

SCWDD: Destroy five years after period covered by account.

IAPID: Destroy five years from last activity or when superseded or obsolete, whichever is sooner.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by centralized access control to include the use of CAC, passwords, file permissions, and audit logs.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should include the full name, current address and telephone number, and the name and number of this SORN. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents and appealing initial agency determinations are published in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this System of Records should address written inquiries to SAN System Manager, Director of Institute of Security Cooperation Studies or Director of Research, 2475 K Street, Wright-Patterson AFB, OH 45433–7641. Signed, written requests should include the full name, current address and telephone number, and the name and number of this SORN. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

September 22, 2016, 81 FR 65343.

[FR Doc. 2020–00587 Filed 1–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0013]

Agency Information Collection Activities; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Education (ED), Office of Management (OM).

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 March 16, 2020.

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–2020–SCC–0013. 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 Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–453–7061.

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: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1880–0542.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 450,000.

Total Estimated Number of Annual Burden Hours: 225,000.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Dated: January 13, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–00632 Filed 1–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–16–000]

Portland Natural Gas Transmission System; Notice of Schedule for Environmental Review of the Westbrook Xpress Project

On November 18, 2019, Portland Natural Gas Transmission System (PNGTS) filed an application in Docket No. CP20–16–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Westbrook XPress Project (Project), and would provide about 131 million standard cubic feet of natural gas per day to New England using TransCanada PipeLines Limited's Canadian Mainline and Trans-Quebec & Maritimes Pipeline to access North American supply basins.

On December 2, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—April 2, 2020

90-day Federal Authorization Decision Deadline—July 1, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Westbrook XPress Project would consist of the following facilities, all of which are proposed in Cumberland County, Maine:

- Installation of one new 15,900 horsepower natural gas fired turbine compressor unit and appurtenant facilities in a greenfield expansion area approximately 1,500 feet southwest of the currently developed Westbrook Compressor Station;
- about 1,500 feet of 30-inch-diameter suction and discharge lines to connect the greenfield expansion area to the existing station; and
- modifications at the existing Westbrook Metering and Regulating Station 30006, including replacement of existing piping, replacement of existing filter separator, building modifications, and appurtenant facilities.

Background

On December 12, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Westbrook XPress Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. All substantive comments received in response to the NOI will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP20–16), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00626 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 460–096]

City of Tacoma, Washington; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 460–096.

c. *Date Filed:* December 20, 2019.

d. *Applicant:* City of Tacoma, Washington.

e. *Name of Project:* Cushman Hydroelectric Project.

f. *Location:* The project is located on the North Fork of the Skokomish River in Mason County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Bret Forrester, Wildlife and Lands Manager, Tacoma Power, 3628 South 35th Street, Tacoma, WA 98409; (253) 502–8782, or *bforrest@ci.tacoma.wa.us*.

i. *FERC Contact:* Mark Ivy at (202) 502–6156, or *mark.ivy@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* February 10, 2020.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–460–096. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Tacoma Power requests Commission approval to continue to allow five parcels of leased land to be used as private community parks (Division 1 Park, Division 2 Park, Division 4 Park, Division 9 Park, and Division 14 Park). These parcels are leased to the Lake Cushman Development Company which created the parks to serve nearby residents who provide funds to operate the parks. Prior to the July 30, 1998 relicensing, which modified the project boundary, these parks were located entirely outside of the project boundary. Since portions of the parks were incorporated into the project boundary when the new license was issued, Tacoma Power filed a non-project use of project lands application to keep the parks private.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00621 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6544–004]

Ampersand Collins Hydro, LLC, Dichotomy Collins Hydro, LLC; Notice of Transfer of Exemption

1. On January 2, 2020, Ampersand Collins Hydro, LLC exemptee for the Collins Hydroelectric Project No. 6544, filed a letter notifying the Commission that the project was transferred from Ampersand Collins Hydro, LLC to Dichotomy Collins Hydro, LLC. The exemption from licensing was originally issued on February 9, 1984.[1] The project is located on Chicopee River in

[1] *I–MAXMAT Corporation,* 26 FERC ¶ 62,112 (1984). The project was transferred to Ampersand Collins Hydro, LLC on July 8, 2014.

Hampden County, Massachusetts. The transfer of an exemption does not require Commission approval.

2. Dichotomy Collins Hydro, LLC is now the exemptee of the Collins Hydroelectric Project No. 6544. All correspondence must be forwarded to: Mr. Ian Clark, Dichotomy Collins Hydro, LLC, 65 Ellen Ave, Mahopac, NY 10541, Email: *ianc@dichotomycapital.com.*

Dated: January 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00628 Filed 1–15–20; 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: ER20–554–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3517R2 Plum Creek Wind, LLC GIA—Amended Filing to be effective 11/27/2019.
Filed Date: 1/10/20.
Accession Number: 20200110–5199.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–683–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Reflect the Correct Effective Date of Selected Contracts to be effective 3/23/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5170.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–694–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Rate Schedule No. 102 to be effective 3/23/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5180.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–764–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Cancel GIA and Service Agreements PPD–SPVP 044–12 KV Dexus Project to be effective 11/30/2019.
Filed Date: 1/9/20.
Accession Number: 20200109–5218.
Comments Due: 5 p.m. ET 1/30/20.

Docket Numbers: ER20–765–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2018–01–10_Termination of SA 3154 ATC–ACEC PCA (Hancock) to be effective 1/11/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5012.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–766–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Amendment to Original ISA, SA No. 5448; Queue No. AD2–070 (amend) to be effective 7/9/2019.
Filed Date: 1/10/20.
Accession Number: 20200110–5077.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–767–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: RE Limestone LGIA Filing to be effective 1/6/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5079.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–768–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: § 205(d) Rate Filing: 2020–01–10_SA 3398 ITC–MEC FSA (J498 J499 J500) to be effective 3/11/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5101.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–769–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: § 205(d) Rate Filing: 2020–01–10_SA 3399 ITC-Duane Arnold Solar FSA (J504) to be effective 3/11/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5102.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–770–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5222; Queue No. AB2–169 (amend) to be effective 10/2/2018.
Filed Date: 1/10/20.
Accession Number: 20200110–5121.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–771–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Cardinal-Hickory Creek Owners' Coordination Agreement to be effective 3/11/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5138.
Comments Due: 5 p.m. ET 1/31/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–499–000.
Applicants: Baxter Senior Living, LLC.
Description: Form 556 of Baxter Senior Living, LLCW.
Filed Date: 1/10/20.
Accession Number: 20200110–5127.
Comments Due: Non-Applicable.

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: January 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00619 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC20–44–000]

Questar Southern Trails Pipeline Company; Notice of Filing

Take notice that on December 30, 2019 Questar Southern Trails Pipeline Company submitted a request for a waiver of the reporting requirement to file the FERC Form 2 Certified Public Accountant Certification for 2019.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 10, 2020.

Dated: January 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00624 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 943–131]

Public Utility District No. 1 of Chelan County, Washington; Notice of Application for Approval of Contract for the Sale of Power for a Period Extending Beyond the Term of the License

Take notice that on October 15, 2019, Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), filed with the Commission an application for approval of a contract for the sale of power from its licensed Rock Island Hydroelectric Project No. 943 (Project) for a period from the expiration of its existing license for the Project on December 31, 2028, through December 31, 2030. The Project is located on the Columbia River in Chelan and Douglas counties, Washington.

Section 22 of the Federal Power Act, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. Chelan PUD asserts that approval of the submitted contract is in the public interest.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 10, 2020.

Dated: January 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00627 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4108–017]

City of St. Cloud; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License for the St. Cloud Hydroelectric Project, and Commencing Pre-filing Process.

b. *Project No.:* 4108–017.

c. *Dated Filed:* November 15, 2019.

d. *Submitted By:* City of St. Cloud.

e. *Name of Project:* St. Cloud Hydroelectric Project.

f. *Location:* On the Mississippi River in Stearns, Benton, and Sherburne Counties, in the City of St. Cloud, Minnesota. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Tracy Hodel, Public Services Director, 400 Second Street South, St. Cloud, MN 56301; *tracy.hodel@ci.stcloud.mn.us* or (320) 255–7226.

i. *FERC Contact:* Nicholas Ettema at (312) 596–4447 or email at *nicholas.ettema@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC 61,076 (2001).

k. *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.

l. With this notice, we are designating the City of St. Cloud as the Commission's non-federal

representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. The City of St. Cloud filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is 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 numbers, 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). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this project or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD 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 P–4108–017.

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 PAD or SD1, and any agency requesting cooperating status must do so by March 14, 2020.

p. 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, the meetings listed below 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 project at the times and places 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:

Evening Scoping Meeting

Date and Time: Tuesday, February 11, 2020, at 6:00 p.m.

Location: Country Inn & Suites, 235 Park Avenue South, St. Cloud, MN 56301.

Phone Number: (320) 259–9802.

Daytime Scoping Meeting

Date and Time: Wednesday, February 12, 2020, at 9:00 a.m.

Location: Country Inn & Suites, 235 Park Avenue South, St. Cloud, MN 56301.

Phone Number: (320) 259–9802.

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 n. 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 potential applicant and Commission staff will conduct an Environmental Site Review of the project on Tuesday, February 11, 2020, starting at 10:00 a.m. All participants should meet in the parking lot at the St. Cloud Hydroelectric Project's powerhouse on 1st Avenue South, approximately 500 feet south of University Drive on the west bank of the Mississippi River in St. Cloud, Minnesota. If you plan to attend the environmental site review, please contact Tracy Hodel, at (320) 255–7225 or *tracy.hodel@si.stcloud.mn.us,* by February 4, 2020. Participants must be 16 years of age or older and wear closed-toe shoes. Please indicate how many participants will be attending with you.

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 PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public record of the project.

Dated: January 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00623 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Notice Providing Update on Market-Based Rate Database

On July 18, 2019, the Commission issued a final rule in Docket No. RM16–17–000 that, among other things, adopted a proposal to collect market-based rate information through a relational database (MBR Database).[1] The final rule indicated that:

> After issuance of this final rule, documentation for the relational database will be posted to the Commission's website, including XML, XSD, the MBR Data Dictionary, and a test environment user guide. Additionally, after issuance of this final rule, a basic relational database test environment will be available to submitters and software developers. The Commission intends to add to the new test environment features on a prioritized, scheduled basis until complete. We note that the Commission will inform the public of when releases will be made publicly available. This will allow internal and external development to occur contemporaneously as new features are made available for outside testing.[2]

Consistent with the final rule, please be advised that updated versions of the XML, XSD, and MBR Data Dictionary are available on the Commission's website.

Additionally, please be advised that the test environment for the MBR Database is now available and can be accessed on the MBR Database web page. At launch, this test environment will be available to users that are eRegistered with the Commission. eRegistered users will be able to submit test XML submissions into the database, as well as create FERC generated IDs (GID) and Asset IDs. Please note that this is a test environment and that all submissions into the database—specifically XMLs and all created GIDs and Asset IDs—will not be part of the official record and will be cleared from the database before it officially goes live. Further, as indicated in the final rule, the Commission intends to add features to this test environment periodically until complete.[3] Interested parties can obtain notice of these new features by monitoring the market-based rate page on the Commission's website. The Commission will issue an additional notice prior to clearing the database shortly before the database goes live.

Lastly, please be advised that Company Registration has been updated to reflect MBR as a filing type. Unlike GIDs and Asset IDs, any updates to Company Registration will remain permanent. Entities that will need to make submissions to the database (*i.e.,* all entities that have market-based rate authority) must include MBR as a filing type and assign account managers to make the submissions.

For more information about the MBR Database, please send an email to *MBRDatabase@ferc.gov.*

Dated: January 10, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00622 Filed 1–15–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes,* Order No. 860, 168 FERC 61,039 (2019).

[2] *Id.* P 309.

[3] *Id.*

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–1]

Property Assessed Clean Energy (PACE) Program

AGENCY: Federal Housing Finance Agency.

ACTION: Notice and Request for Input.

SUMMARY: The Federal Housing Finance Agency (FHFA), as regulator for Fannie Mae and Freddie Mac as well as the Federal Home Loan Banks, seeks public input on residential energy retrofitting programs financed through special state legislation enabling a ''super-priority lien'' over existing and subsequent first mortgages. In particular, FHFA seeks input on potential changes to its policies for its regulated entities based on safety and soundness concerns. These state programs, termed Property Assessed Clean Energy or PACE, address residential properties and commercial applications. FHFA's primary focus is on residential PACE programs in this Request for Input (RFI).

DATES: Written input must be received by March 16, 2020.

ADDRESSES: You may submit your response on the Notice identified by ''PACE Request for Input, Notice No. 2020–N–1,'' by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting input. If you submit your response to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: ''PACE Request for Input, Notice No. 2020–N–1.''

FHFA will post all public responses received without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all responses received will be available for examination by the public through the electronic docket for this Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, *Alfred.Pollard@fhfa.gov,* (202) 649–3050 (this is not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Request for Input

A. PACE Programs

The Federal Housing Finance Agency (FHFA), as regulator for Fannie Mae and Freddie Mac (the Enterprises) as well as the Federal Home Loan Banks, seeks public input on residential energy retrofitting programs financed through special state legislation enabling a ''super-priority lien'' over existing and subsequent first mortgages. In particular, FHFA seeks input on potential changes to its policies for its regulated entities based on safety and soundness concerns. These state programs, termed Property Assessed Clean Energy or PACE, address residential properties and commercial applications. FHFA's primary focus is on residential PACE programs in this Request for Input (RFI).

These state initiatives authorize counties, municipalities and other government entities to create a financing scheme with, in the majority of cases, private parties administering the home energy retrofit programs. The programs lend to consumers for defined products and services and approved contractors. To attract private capital, the loans impose a tax assessment on the property so that the loan is repaid under a locality's taxing structure to the benefit of bond holders or lenders. This assures priority status over any first lien mortgage at any tax sale or foreclosure sale. PACE is not traditional second mortgage or home equity lending.

Each PACE lending program was created to attract private investors to provide funds for loans for energy retrofits. Unlike normal secured home improvement financing, the PACE program seeks to secure a super-priority first lien over all other lien holders on a property through a governmental property tax lien. As the financing concept provides that the lien, associated with the PACE loan, ''runs'' with the property, this proves attractive to investors who provide PACE program funding. With a super-priority lien position, the risk of investor loss becomes very small as that lien has priority over pre-existing first mortgages and has the possibility of continuing to run with the property to a subsequent purchaser. This investor opportunity comes at the expense of existing lien holders, who have not had the ability to consent or not consent to the new lien and unexpectedly bear a new risk of loss that did not exist at the time the mortgage was originated.

As a tax-related assessment, the PACE loan is fundamentally asset-based lending that ''runs with the land.'' This means a purchaser of a home with an existing PACE loan assumes the outstanding obligation and any unpaid or delinquent amounts. Despite the benefit of highest priority lien position, interest rates charged to borrowers for PACE are typically substantially higher than for a first-lien mortgage. Purchasers may not wish to acquire such obligations where the PACE interest rate is higher than their purchase loan rate or the improvements are out of date or in need of repair. State laws provide for localities to collect administrative fees of up to 10 percent of the loan amount usually added to the loan amount, and for lending amounts tied not to borrower's ''ability to repay,'' but to the property and its assessment up to 15 percent of the assessed value. The holder of such a lien may move for foreclosure on the property or the tax administrator may do so and recover the unpaid amount of the PACE loan; other parties recover what remains.

Such loans are not recorded in local land records but in tax records and may bear a denomination other than PACE such as an abbreviated PACE program name. Such tax records usually list the amount of the loan and the amount paid, but do not provide distinctions on principal and interest. They are not part of ordinary mortgage record searches.

Some PACE programs claim that PACE loans do not affect debt-to-income (DTI) ratios, an important benchmark for consumers and lenders. The Enterprises require lenders to include homeowner property tax payments that would include PACE assessments as a component of the loan applicant's present or future housing expense to calculate DTI for loan eligibility. Unavailable data on DTI may permit a homeowner to incur more debt with lenders unaware of the PACE obligation due to a lack of DTI information or potentially inaccurate credit scores. Because PACE loans are not recorded in land records but in tax rolls, often with varying names or descriptions, they are difficult to identify in title searches.

Finally, PACE programs lack uniformity and may differ in every community within a state, making it challenging for lenders to evaluate the implications for individual homeowners or home purchasers.

B. FHFA, Financial Regulators and Super-Priority Liens

In 2010, FHFA, the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration and the Federal Deposit Insurance Corporation highlighted the risks attendant to PACE lending.[1] Fundamentally, the priming of a first mortgage was and remains the central issue. FHFA directed Fannie Mae and Freddie Mac not to purchase or re-finance mortgages with PACE liens and reserved other potential actions. The Federal Home Loan Banks were alerted to the need for vigilance in accepting collateral for advances that may have PACE liens attached. FHFA determinations regarding residential PACE loan programs have been upheld in three Circuit Court decisions.[2]

In 2014, FHFA re-stated its concerns regarding PACE and other ''lien-priming'' programs.[3] In its public statement of December 22, 2014, FHFA summarized that—

The existence of these super-priority liens increases the risk of losses to taxpayers. Fannie Mae and Freddie Mac, while operating in conservatorship, currently support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. One of the bedrock principles in this process is that the mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning that they have first priority in receiving the proceeds from selling a house in foreclosure. As a result, any lien from a loan added after origination should not be able to jump in line ahead of a Fannie Mae or Freddie Mac mortgage to collect the proceeds of the sale of a foreclosed property.

Enterprise programs support the ability of a borrower to purchase a home and the Enterprise mortgage is recorded in first-lien position. A PACE loan is only available to someone who owns a home. In the vast majority of cases, home ownership is obtained by a mortgage loan in which a lender has placed a substantial amount of capital at risk. For the Enterprises, this means up to $510,400 or, in high cost areas, up to $765,600 to provide homeownership opportunities. Accordingly, the Enterprises require that the mortgage loans they purchase remain in a first-lien position for the life of the loan.[4] Also, the congressional charters for the Enterprises require borrowers to have at least 20 percent equity in a home or an approved form of credit enhancement, such as mortgage insurance, to address the risk of nonpayment. A municipality providing ''super-priority'' lien status for a PACE loan can erode—partially or completely—that 20 percent equity cushion, as required by statute, and place either the homeowner or a regulated entity, or both, at substantial risk.

PACE programs present a threat to the quality and stability of large amounts of Enterprise loans. According to Fannie Mae and Freddie Mac, in mid-2019 in California and Florida, the two most active residential PACE jurisdictions, the Enterprises had over 5.4 million loans with unpaid principal balances of approximately $1.18 trillion. These bear a risk of impairment by super-priority PACE loans that the Enterprises clearly stated in their loan instruments must be avoided. Further, these loans, that ''run with the land,'' impair the foreclosure process when that is an unavoidable outcome to the benefit of PACE investors.

Consumer issues have surrounded the PACE programs from their inception. These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner

[1] For example, in OCC's Supervisory Guidance, OCC 2010–25 (July 6, 2010) at *https://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-25.html,* the OCC emphasized that beside loans, banks investing in mortgage backed securities should take into account PACE programs in their asset valuations and to consider the impact of PACE programs on their institutions and the markets when making any decision on ''associated bond underwriting.'' Overall, OCC indicated it considered programs that failed to ''observe existing lien preference'' to pose ''significant regulatory and safety and soundness concerns.''

[2] *See County of Sonoma* v. *FHFA,* 710 F.3d 987 (9th Cir. 2013); *Leon County* v. *FHFA,* 700 F.3d 1273 (11th Cir. 2012); and *Town of Babylon* v. *FHFA,* 699 F.3d 221 (2nd Cir. 2012) (appeal of consolidated cases, after granting of motions to dismiss in the Southern and Eastern Districts of New York).

[3] *https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx.*

[4] Enterprise loans are packaged into mortgage backed securities and purchased by investors which supports housing finance; investors rely on the underlying loan pool in making their purchases.

problem and marketing a full house retrofit), rolling the administrative fees for the county into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures and indiscriminate lending regardless of ability to repay.[5] Consumer protections at the state level for PACE lending are uneven and in some instances non-existent. Multiple reports exist of pressure on homeowners with PACE liens to pay off the PACE loans in order to sell their homes, either to permit the purchaser to secure financing or because the purchaser does not want to be saddled with a loan with an interest rate that can be double the rate of a new mortgage.[6] Borrower demands for pay offs have occurred independent of positions taken by FHFA.

Recognizing consumer issues, Congress in 2018 enacted amendments to the Truth in Lending Act to require federal regulation when PACE loans are made to assure more effective consumer protections, focused on ability to repay requirements. The law did not mandate that such properties impacted by such loans serve as collateral for mortgage loans made, purchased or authorized by any primary or secondary market participant. The Consumer Financial Protection Bureau was entrusted with implementing this law by regulation.[7]

C. Financing Energy Retrofitting

FHFA and other federal regulators support financing for residential energy retrofitting, where appropriate, and, in many instances, that an actual consumer benefit exists as documented by an energy saving report. Such lending, by regulated financial institutions, is undertaken with strict attention to ability to repay rules, safety and soundness prescriptions and other elements of the robust range of federal and state consumer protection provisions. Properly underwritten loans provide sustainable interest rates, consider the financial position of a homeowner and provide mortgage makers and mortgage investors a reliable product for purchase. At the same time PACE financing encumbers the foreclosure process with an obligation that ''runs with the land'' where normal foreclosure ends claims against the property.

The Department of Housing and Urban Development (HUD) has taken initial steps to address some of the same concerns described above. On December 7, 2017, HUD issued a Mortgagee Letter announcing that the Federal Housing Administration (FHA) will no longer insure new mortgages on properties that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund (MMI Fund) due to the priority lien status given to such assessments.[8]

Despite restricting FHA insurance for properties already encumbered by PACE assessments, nothing prevents a FHA-insured borrower from acquiring a PACE loan in the future. HUD considers PACE assessments as potentially dangerous to the MMI Fund and, further, placing these assessments on FHA-insured properties post-endorsement creates a lack of transparency making it difficult for the agency to understand the true nature of the risks involved.[9] HUD has indicated that it is unknown how many existing FHA borrowers have taken out PACE loans and has expressed concern that FHA is not in a first lien position.[10] Allowing PACE assessments to essentially subordinate the FHA-insured mortgage creates a default under the mortgage and is particularly problematic for HUD and FHA as the MMI Fund is exposed to unmeasurable risk.

D. Actions by the Federal Housing Finance Agency

The continuation of PACE programs and their adverse impact merits review for potential modification by FHFA of its safety and soundness and prudential standard directions to its regulated entities.

In its 2010 statement on PACE programs and in its directions to Fannie Mae and Freddie Mac, FHFA indicated that the Enterprises could undertake certain actions, including but not limited to, adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amounts available to borrowers in jurisdictions with PACE program, requiring in loan agreements that a PACE loan may only be made in relation to an Enterprise purchased mortgage with the consent of the Enterprise, tightening debt-to-income ratios to account for additional borrower obligations associated with PACE loans and such other actions as would be appropriate. The Federal Home Loan Banks were advised to consider their acceptance of collateral that might be affected by PACE loans as a prudent safety and soundness practice.

The most direct action taken was by the Enterprises issuing bulletins and updates to their seller-servicer guides to indicate the Enterprises would not make or refinance a mortgage loan for a property encumbered by a PACE lien.[11] This Request for Input asks for public comment on enhancing the actions to be taken regarding PACE liens in light of their continued threat to first lien mortgages and to homeowners and home purchasers from the lien priming effects of PACE loans.[12] Such actions

[5] California enacted into law AB 1284 (California Financing Law) in 2017. The California Department of Business Oversight offered two opportunities for public input in November 30, 2017 and April 19, 2018 regarding its rulemaking under the law for licensure, program administration, consumer related provisions and cost benefit analysis of its rules. *See http://www.dbo.ca.gov/Licensees/PACE/.*

Materials presented to the legislature and to the California Department of Business Operations provide significant information of consumer problems relating to PACE, including descriptions of individual consumer issues with PACE administrators and their contractors and with the impact on selling their homes. As well, information on the effectiveness of individual products and how quickly homeowners receive benefits in excess of the loan payments (on higher cost loans) have been questioned and led to federal legislation on disclosure requirements. Additionally, real estate professionals have commented on the problems of selling homes with PACE liens.

[6] *Id.* Consumer advocacy groups have highlighted, along with repeated newspaper reports, that this dilemma exists for homeowners with PACE liens. Consumer complaints involving PACE loans on a range of complaints have been detailed; *see,* for example, National Consumer Law Center, *Residential Property Assessed Clean Energy Loans: The Perils of Easy Money for Clean Energy Improvements* (September 2017), pp. 5–17.

[7] Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). Also, Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (March 8, 2019).

[8] U.S. Dep't of Hous. and Urban Dev., Mortgagee Letter 2017–18 (Dec. 7, 2017).

[9] Press Release, U.S. Dep't of Hous. and Urban Dev., FHA to Halt Insuring Mortgages on Homes with PACE Assessments (Dec. 7, 2017) *https://archives.hud.gov/news/2017/pr17-111.cfm.*

[10] *An Examination of the Federal Housing Administration and Its Impact on Homeownership in America: Hearing Before the Subcomm. on Hous., Cmty Dev., and Ins. Of the H. Comm. on Fin. Serv.,* 116th Cong. (Dec. 5, 2019).

[11] Fannie Mae Selling Guide (May 1, 2019), Lender Letter (September 18, 2009), and announcements (February 27, 2018; December 1, 2010; August 31, 2010): *https://www.fanniemae.com/content/guide/selling/b5/3.4/01.html, https://www.fanniemae.com/content/announcement/ll0709.pdf, https://www.fanniemae.com/content/announcement/sel1802.pdf, https://www.fanniemae.com/content/announcement/sel1016.pdf, https://www.fanniemae.com/content/announcement/sel1012.pdf.*

Freddie Mac Single-Family Seller/Servicer Guide (May 1, 2019), Freddie Mac Single-Family Refinancing and Energy Retrofit Programs page, Selling Guide Bulletin (August 24, 2016), Lender Letter (August 20, 2014): *https://guide.freddiemac.com/app/guide/section/4301.4, https://sf.freddiemac.com/general/refinancing-and-energy-retrofit-programs, https://guide.freddiemac.com/app/guide/bulletin/2016-16.*

[12] In certain related cases, focused mainly but not exclusively on conservatorship authorities, courts have made clear that both Enterprise guides and actions by FHFA regarding PACE are appropriate

are founded on FHFA's regulatory authorities relating to safety and soundness and the prudential authorities enunciated in the Housing and Economic Recovery Act of 2008.[13]

FHFA, therefore, asks for public input on the following questions:

1. Should FHFA direct the Enterprises to decrease loan-to-value ratios for all new loan purchases in states or in communities where PACE loans are available? By how much should available loan-to-value ratios be reduced to address the increased risk of such liens being placed on the property and what related implications would result from such actions? Should loan-to-value (LTV) ratios be reduced for all loan purchases sufficient to take into account the maximum amount of a PACE financing available in that community? Should potential future increases in permitted percentage of available PACE financing-to-assessed value be considered?

2. Should FHFA direct the Enterprises to increase their Loan Level Price Adjustments (LLPAs) or require other credit enhancements for mortgage loans or re-financings in communities with available PACE financing? What increased levels would be appropriate for such LLPAs in light of the risks of PACE financing posed to the Enterprises?

3. Should FHFA consider other actions regarding Enterprise purchase or servicing requirements in jurisdictions with PACE programs?

4. Should FHFA establish safety and soundness standards for the Federal Home Loan Banks to accept as eligible advance collateral mortgage loans in communities where PACE loans are available? How might those standards best address the increased risk of such collateral? Should such standards be in line with actions that FHFA would undertake for the Enterprises, recognizing the difference in business structures between the Enterprises and the Banks?

5. How might the Enterprises best gather or receive information on their existing guaranteed or owned mortgage loan portfolios to understand which loans have PACE liens and in what amount? Should mortgage loan servicers be required to gather and report such information to the Enterprises on a periodic basis? What would the costs and implications be of such a requirement?

6. Would it be most effective for states that authorize PACE programs to require a registry of PACE lending so that information currently only held by PACE vendors or local tax rolls could be available and maintained on an ongoing basis? [14] What data should be included in such a registry? What access would be permitted while protecting consumer privacy? Should a federal agency provide for such a registry? What minimum information would be available to allow credit reporting agencies to include PACE obligations in credit reports obtained in connection with mortgage origination or servicing?

7. Should servicers of mortgage loans for the Enterprises provide an annual or more frequent notice to existing borrowers in PACE-eligible communities informing them that, under the terms of their mortgage, PACE liens are not permitted? Should borrowers be informed of the difficulties that may arise in selling or refinancing their home when a PACE lien has been placed on their property? What other information, if any, should be provided by servicers to borrowers with regard to PACE liens? Should borrowers in PACE jurisdictions be required to execute any additional agreements or certifications in connection with mortgages for the Enterprises, Home Loan Banks or FHA guaranteeing the borrowers will not accept PACE financing for energy efficiency improvements?

8. The Consumer Financial Protection Bureau published and received comment on an Advanced Notice of Proposed Rulemaking on disclosures under the Truth in Lending Act, as required by section 307 of the Economic Growth, Regulatory Relief and Consumer Protection Act, Public Law 115–174 (2018). The ANPR addresses, in line with the statute, TILA sections relating to ability to repay requirements and to application of civil money penalty provisions for TILA violations.

FHFA seeks input on matters beyond the scope of the statutory and regulatory provisions addressed by the CFPB. For example, do consumers face issues regarding the tax treatment of PACE loan payments and reporting to consumers of deductible versus non-deductible expenses? Are there consumer impacts from PACE liens on title searches? What impacts might arise where local governments use structures such as an unelected Joint Powers Authority that limit government responsibility for PACE program administration? What options exist for a homeowner who can no longer afford to repay a PACE lien, such as a tax deferral by the taxing authority? What issues arise from the use of approved contractor lists and the impact on costs, contractor regulation, and recourse for consumers for defective equipment? What issues may arise from notification practices regarding PACE liens at time of property sales and other issues that align with or expand on consumer related concerns raised by the CFPB?

9. What information regarding experiences under programs of the Department of Housing and Urban Development relating to PACE may be relevant for consideration by FHFA in its evaluation of public input? Where PACE programs create super-priority liens, should loan products issued or guaranteed by the government, such as Federal Housing Administration mortgage insurance, consider adjustments such as risk based mortgage insurance premiums or limits on partial or assignment claims or the availability or terms of modifications allowable? Should government programs, such as those of FHA, contemplate further limiting the availability of mortgage insurance in PACE jurisdictions for forwards, HECMS or both? Are there improvements that government programs could undertake, such as FHA increasing utilization of its ''green'' insured mortgages or its Section 203(k) rehabilitation mortgage insurance program to avoid the risks associated with PACE programs?

E. Responses

FHFA invites responses on all aspects of this Request for input. Respondents should identify by number the question each of their comments addresses. Copies of all responses will be posted without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *https://www.fhfa.gov.* Copies of all responses received will be available for

and preemptive of state authorities, including state taxing authorities. *See e.g., Berezovsky* v. *Moniz,* 869 F.3d 923 (9th Cir. 201) (HOA priority liens); *FHFA* v. *City of Chicago,* 962 F.Supp.2d 1044 (N.D.Ill. 2013) (local regulation of property maintenance preempted by FHFA action under HERA); and *Commonwealth of Mass.* v. *FHFA,* 54 F.Supp.3d 94 (D.Mass. 2014) (even if conservatorship not in place, court ruled that federal law preempts state law that are in ''irreconcilable conflict'' with federal statute and that applied to state housing statute at issue in case).

[13] 12 U.S.C. 4513b provides FHFA should establish for its regulated entities, by regulation or guidelines, standards related *inter alia* to management of market risk and credit risk, management of asset growth and such other operational and management standards as the Director determines to be appropriate.

[14] California enacted in AB 2063, Section 13 (2018) discretionary authority for the California Division of Business Organizations to require establishment of a ''real-time registry or data base system for tracking PACE assessments . . . [which may include] features for providing or obtaining information about a property's status with regard to PACE assessments placed on [a] property, whether recorded or not.''

examination by the public through the electronic docket for this Notice also located on the FHFA website.

In responding to these questions, respondents should provide their viewpoints as to the implications of such actions, the cost to business or to the public of such actions, benefits or risks in such actions, and specific terms or specific provisions that would be appropriate in undertaking such actions. FHFA also welcomes additional input on any issues raised in considering these questions or going beyond the questions asked. Responders need not reply to all questions set forth here. At the same time, respondents may suggest other actions that FHFA should consider and provide an explanation of the rationale and benefits of such action.

Dated: January 10, 2020.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2020–00655 Filed 1–15–20; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Census of Finance Companies and Survey of Finance Companies (FR 3033p and FR 3033s; OMB No. 7100–0277).

DATES: Comments must be submitted on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by FR 3033p or FR 3033s, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections

Report title: Census of Finance Companies.

Agency form number: FR 3033p.

OMB control number: 100–0277.

Frequency: Quinquennially.

Respondents: Finance companies.

Estimated number of respondents: 12,800.

Estimated average hours per response: 0.33.

Estimated annual burden hours: 4,224.

General description of report: The FR 3033p is a census survey designed to identify the universe of finance companies eligible for potential inclusion in the FR 3033s and to enable the stratification of the sample for more statistically efficient estimation. The FR 3033p currently comprises 11 questions to assess the company's asset size, level of loan and lease activity, company structure, and licensing authority.

Report title: Survey of Finance Companies.

Agency form number: FR 3033s.

OMB control number: 7100–0277.

Frequency: Quinquennially.

Respondents: Finance companies that responded to the FR 3033p.

Estimated number of respondents: 1,200.

Estimated average hours per response: 1.5.

Estimated annual burden hours: 1,800.

General description of report: From the universe of finance companies identified by the FR 3033p, a sample of finance companies will be invited to fill out FR 3033s. From these finance companies, the FR 3033s survey collects balance sheet data on major categories of consumer and business credit receivables and major liabilities. In addition, the survey may be used to gather information on topics that are pertinent to increasing the Federal Reserve's understanding of the finance companies.

Proposed revisions: The Board proposes to revise the FR 3033p to improve the accuracy of identifying finance companies, improve response rates, and simplify the form overall; the FR 3033s is not being revised in this submission. The proposed FR 3033p revisions, which would be effective for the May 2020 survey date, include:

- Revising the questionnaire title to ''2020 Census of Finance Companies and Other Lenders'' for clarity. Responses from past rounds of surveys indicated that some respondents might not view themselves as finance companies, even though they are likely to be a target of interest by the survey definition.
- Revising general instructions at the beginning of the survey for clarity.
- Renumbering questions as needed to conform to revisions and to improve clarity. As a result, the FR 3033p will have seven questions instead of eleven.
- Clarifying the ''No'' option in question 1 to read ''My company or I do not make loans or leases (in person or online)'' so that an early exit is offered to recipients who have likely received the survey form by mistake.
- Revising the ''Other'' option in question 1 to have two choices: ''Sold'' and ''Not in business''.
- Simplifying question 3 to a yes/no question.
- Revising the wording in question 4 to read ''Business loans and leases'' and ''Consumer loans and leases''. Definitions for these terms are incorporated into the answer choices.
- Deleting question 5. This question asks about the types of credit or financing that a company offers. It has five parts with multiple choices available for selection. This question was first added to the 2015 census, and the responses showed little value. The burden seems relatively high, especially given the lack of value.
- Revising question 11 and renumbering as question 7. Explicit categories for contact information are created, such as name of person completing the survey and title of the person. City, state, and zip code information are asked in separate categories.
- Adding a check box at the end of the questionnaire to offer respondents an opportunity to receive the results of the survey. This is a way to encourage participation and improve survey response.

Legal authorization and confidentiality: The FR 3033 is authorized pursuant to sections 2A and 12A of the Federal Reserve Act (''FRA''). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (''FOMC'') ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates'' (12 U.S.C. 225a). Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to [their] bearing upon the general credit situation of the country'' (12 U.S.C. 263). Information collected from the FR 3033 is used to fulfill these obligations.

The information collected pursuant to the FR 3033 may be treated as confidential pursuant to exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.''

Consultation outside the agency: For the renewal of this information collection, the Board consulted with OpenCorporates, Competiscan, Zoominfo, Melissa Data, and Infogroup to identify companies as potential respondents for the census.

Board of Governors of the Federal Reserve System, January 10, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00566 Filed 1–15–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to implement the Pre-Hire Conflict of Interest Screening Form (FR 28c; OMB No. 7100–NEW).

DATES: Comments must be submitted on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by *FR 28c,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Implement the Following Information Collection

Report title: Pre-Hire Conflict of Interest Screening Form.

Agency form number: FR 28c.

OMB control number: 7100–NEW.

Frequency: As needed.

Respondents: Individuals who have been selected for an interview during the hiring process.

Estimated number of respondents: 2,300.

Estimated average hours per response: 0.5.

Estimated annual burden hours: 1,150.

General description of report: The proposed FR 28c form will collect information from external applicants applying to the Board regarding certain financial interests and business relationships held by the applicant and by his/her immediate family members, as well as the external applicant's involvement with certain outside organizations, to determine whether a conflict of interest may exist, which could impact the applicant's ability to fulfill the responsibilities associated with the position for which they have applied.

Legal authorization and confidentiality: The collection of this information is authorized by section 10 of the Federal Reserve Act, 12 U.S.C. 244, which provides that the ''employment, compensation, leave, and expenses'' of Board employees ''shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith.'' In addition, pursuant to regulations promulgated by the Office of Government Ethics (OGE) pursuant to 5 U.S.C. 7301, each executive agency's designated ethics officer is required to provide ''advice and counseling to prospective . . . employees regarding government ethics laws and regulations'' and to ''maintain records of agency ethics program activities'' (5 CFR 2638.104(c)(2) and (4)).

Providing the information collected on the FR 28c form is required in order to obtain the benefit of Board employment.

Generally, information provided on the FR 28c form may be kept confidential from the public under exemption 6 of the Freedom of Information Act (FOIA), which protects information in ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)). In addition, financial information collected on the form (such as confidential details about the amount of shares an applicant, their spouse, or minor child owns in a bank) may be withheld under exemption 4 of the FOIA, which protects ''financial information obtained from a person [that is] privileged and confidential'' (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, January 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00614 Filed 1–15–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Registration of Mortgage Loan Originators (CFPB G; OMB No. 7100–0328).

DATES: Comments must be submitted on or before March 16, 2020.

ADDRESSES: You may submit comments, identified by CFPB G, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Registration of Mortgage Loan Originators.

Agency form number: CFPB G.

OMB control number: 7100–0328.

Frequency: Annually.

Respondents: State member banks (SMBs) with $10 billion or less in total assets that are not affiliates of insured depository institutions with total assets of more than $10 billion; subsidiaries of such SMBs that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act; branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks); and commercial lending companies owned or controlled by foreign banks (collectively, ''banking organizations''), as well as employees of banking organizations who act as residential mortgage loan originators (MLOs).

Estimated number of respondents: MLO's (new)—initial set up, 396 respondents; MLO's (new)—disclosure, 396 respondents; MLO's (existing)—updates for changes, 11,422 respondents; MLO's (existing)—maintenance and disclosures, 22,844 respondents; Banking organizations, 674 respondents.

Estimated average hours per response: MLO's (new)—initial set up, 2.5 hours; MLO's (new)—disclosure, 1 hour; MLO's (existing)—updates for changes, 0.25 hour; MLO's (existing)—maintenance and disclosures, 0.85 hour; Depository Institutions and subsidiaries, 118 hours.

Estimated annual burden hours: MLO's (new)—initial set up, 990 hours; MLO's (new)—disclosure, 396 hours; MLO's (existing)—updates for changes, 2,856 hours; MLO's (existing)—maintenance and disclosures, 19,417 hours; Banking organizations, 79,532 hours.

General description of report: In accordance with the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), the Consumer Financial Protection Bureau's (CFPB) Regulation G requires MLOs to register with the Nationwide Mortgage Licensing System and Registry (NMLS or Registry),[1] maintain this registration, obtain a unique identifier, and disclose to consumers upon request and through the Registry their unique identifier and the MLO's employment history and publicly adjudicated disciplinary and enforcement actions. The CFPB's regulation also requires the institutions employing MLOs to adopt and follow written policies and procedures to ensure that their employees comply with these requirements and to conduct annual independent compliance tests.

Legal authorization and confidentiality: The CFPB's Regulation G is authorized pursuant to the S.A.F.E. Act and the Dodd-Frank Act, which transferred to the CFPB the ''consumer financial protection functions,'' including the S.A.F.E. Act, previously vested in certain other Federal agencies.[2] The Board is authorized to enforce consumer financial protection functions, including the CFPB's Regulation G, with respect to SMBs with $10 billion or less in total assets that are not affiliates of insured depository institutions with total assets of more than $10 billion and the subsidiaries of such SMBs that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act (see 12 U.S.C. 1844(c)(5)) under section 1061 of the Dodd Frank Act.[3] The International Banking Act (IBA) requires ''every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks . . . [to] conduct its operations in the United States in full compliance with provisions of any law of the United States . . . which impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws.'' [4] The Board has authority to examine branches and agencies of foreign banks and commercial lending companies owned or controlled by foreign banks and to enforce the provisions of the IBA pursuant to sections 7 and 13 of the IBA.[5] The CFPB G is mandatory.

The unique identifier of MLOs must be made public and is not considered confidential. In addition, most of the information that MLOs submit in order to register with the NMLS will be publicly available. However, certain

[1] *https://mortgage.nationwidelicensingsystem.org/Pages/default.aspx.*

[2] 12 U.S.C. 5101 *et seq.*; 12 U.S.C. 5581.

[3] 12 U.S.C. 5581(c).

[4] 12 U.S.C. 3106a(1).

[5] 12 U.S.C. 3105(c) and 3108(b).

identifying data about individuals who act as MLOs may be treated as confidential pursuant to exemption 6 of the Freedom of Information Act (FOIA), which protects from disclosure information that ''would constitute a clearly unwarranted invasion of personal privacy.'' [6]

With respect to the information collection requirements imposed on banking organizations, because banking organizations are required to retain their own records and make certain disclosures to customers, the FOIA would only be implicated if the Board's examiners obtained a copy of these records as part of the examination or supervision of a financial institution. Records obtained in this manner may be exempt from disclosure under FOIA exemption 8, regarding examination-related materials.[7]

Board of Governors of the Federal Reserve System, January 13, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–00634 Filed 1–15–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Form 2: Grantee Performance Measures (OMB #0970–0500)

AGENCY: Office of Child Care; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF—Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program Form 2: Grantee Performance Measures (OMB #0970–0500; Expiration date 8/31/2020). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) authorizes the Secretary of HHS (in Section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The ACF, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally relevant, evidence-based home visiting programs in at-risk tribal communities; collect and report on performance measures; and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

Specifically, the MIECHV legislation requires that State and Tribal MIECHV grantees collect performance data to measure improvements for eligible families in six specified areas (referred to as ''benchmark areas'') that encompass the major goals for the program. These include:

1. Improved maternal and newborn health;
2. Prevention of child injuries, child abuse, neglect, or maltreatment, and reduction in emergency department visits;
3. Improvement in school readiness and achievement;
4. Reduction in crime or domestic violence;
5. Improvement in family economic self-sufficiency; and
6. Improvement in the coordination and referrals for other community resources and supports.

Tribal MIECHV grantees are required to propose a plan for meeting the benchmark requirements specified in the legislation and must report on improvement on constructs under each benchmark area. Tribal Home Visiting (HV) Form 2 will provide a template for Tribal MIECHV grantees to report data on their progress in improving performance under the six benchmark areas, as stipulated in the legislation.

ACF will continue to use Tribal HV Form 2 to:

- Track and improve the quality of benchmark measures data submitted by the Tribal grantees;
- Improve program monitoring and oversight;
- Improve rigorous data analyses that help to assess the effectiveness of the programs and enable ACF to better monitor projects; and
- Ensure adequate and timely reporting of program data to relevant federal agencies and stakeholders including Congress and members of the public.

Respondents: Tribal MIECHV Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Form 2	23	1	500	11,500

[6] 5 U.S.C. 552(b)(6).

[7] 5 U.S.C. 552(b)(8).

Estimated Total Annual Burden Hours: 11,500.

Authority: Public Law 115–123, Section 511(h)(2)(A) of Title V of the Social Security Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–00593 Filed 1–15–20; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Building Capacity To Evaluate Child Welfare Community Collaborations To Strengthen and Preserve Families (CWCC) Cross-Site Process Evaluation (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) intends to collect data for an evaluation of the initiative, Community Collaborations to Strengthen and Preserve Families (also referred to as Child Welfare Community Collaborations [CWCC]). The cross-site process evaluation will provide insight to ACF about the various factors that promote or impede the implementation of child welfare community collaborations.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The evaluation will involve seven data collection requests:

- *Four Site Visit Discussion Guides:* To systematically document the approaches and strategies used by the first two cohorts of CWCC grantees (FY18 and FY19 awardees), the evaluation team will conduct initial and follow-up interviews with: (1) Project Directors from Lead Grantee organizations and Leaders from partner organizations, and (2) staff from the lead and partner organizations. These interviews will take place during site visits. Each grantee will participate in four site visits.
- *Survey Invitee Template:* The evaluation team will ask the Project Director of each CWCC grant to fill out a Survey Invitee Template to gather contact information for leaders and staff from lead and partner organizations who the evaluation team will invite to complete the Collaboration Survey (see below).
- *Collaboration Survey:* This electronic survey will document perceptions that leaders and staff from the CWCC lead and partner organizations have regarding their organizational/group processes, implementation activities, and progress towards goals. This survey will be administered to staff at all grantee and partner organizations on an annual basis during each cohort's grant period.
- *Site Visit Planning Template:* Each Project Director (or their designee) will complete a Site Visit Planning Template to schedule site visit activities prior to each annual site visit.

Respondents: Leadership and staff from CWCC lead (grantee) organizations and from partner organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Cohort 1 Data Collection for FY18 Grantees					
Site Visit Discussion Guide for Project Directors and Leaders from Partner Organizations—Interview #1	12	1	2	24	8
Site Visit Discussion Guide for Staff from Lead and Partner Organizations—Interview #1	36	1	1	36	12
Site Visit Discussion Guide for Project Directors and Leaders from Partner Organizations—Follow-Up Interviews	12	2	1.5	36	12
Site Visit Discussion Guide for Staff from Lead and Partner Organizations—Follow-Up Interviews	36	2	1	72	24
Survey Invitee Template	4	3	1	12	4
Annual Collaboration Survey	260	3	0.5	390	130
Site Visit Planning Template	4	3	2	24	8
Cohort 2 Data Collection for FY19 Grantees					
Site Visit Discussion Guide for Project Directors and Leaders from Partner Organizations—Interview #1	27	1	2	54	18
Site Visit Discussion Guide for Staff from Lead and Partner Organizations—Interview #1	81	1	1	81	27
Site Visit Discussion Guide for Project Directors and Leaders from Partner Organizations—Follow-Up Interviews	27	2	1.5	81	27
Site Visit Discussion Guide for Staff from Lead and Partner Organizations—Follow-Up Interviews	81	2	1	162	54

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Survey Invitee Template	9	3	1	27	9
Annual Collaboration Survey	585	3	0.5	878	293
Site Visit Planning Template	9	3	2	54	18

Estimated Total Annual Burden Hours: 644.

Authority: Section 105(b)(5) of the Child Abuse Prevention and Treatment Act (CAPTA) of 1978 (42 U.S.C. 5106(b)(5)), as amended by the CAPTA Reauthorization Act of 2010 (Pub. L. 111–320).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–00594 Filed 1–15–20; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4752]

Pediatric Study Plans for Oncology Drugs: Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Pediatric Study Plans for Oncology Drugs: Questions and Answers.'' This draft guidance provides information to sponsors regarding the submission of an initial pediatric study plan (iPSP), as required by the Federal Food, Drug, and Cosmetic Act (FD&C Act), for oncology drugs only. Specifically, when finalized, this draft guidance will provide FDA's current thinking regarding iPSPs for oncology drugs in light of the amendments to the FD&C Act made by the FDA Reauthorization Act of 2017 (FDARA). FDA has received a number of questions on this topic and, as a result, is providing this draft guidance in a question and answer format, addressing the most frequently asked questions.

DATES: Submit either electronic or written comments on the draft guidance by March 16, 2020 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–4752 for ''Pediatric Study Plans for Oncology Drugs: Questions and Answers.'' 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.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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), 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 (CBER), 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. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gregory Reaman, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2202, Silver Spring, MD 20993–0002, 301–796–0785; 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 draft guidance for industry entitled ''Pediatric Study Plans for Oncology Drugs: Questions and Answers.'' This draft guidance provides information regarding the submission of an iPSP, as required by section 505B(e) of the FD&C Act (21 U.S.C. 355c(e)), for oncology drugs only. When finalized, this draft guidance will provide FDA's current thinking regarding iPSPs for oncology drugs in light of the amendments to section 505B of the FD&C Act (also referred to as the Pediatric Research Equity Act, or PREA) made by section 504 of FDARA (Pub. L. 115–52). This draft guidance does not contain a complete discussion of general requirements for development of drugs for pediatric use under PREA or section 505A of the FD&C Act (21 U.S.C. 355a) (also referred to as the Best Pharmaceuticals for Children Act or BPCA (Pub. L. 107–109)).

Section 504 of FDARA amended section 505B of the FD&C Act to require—for original applications submitted on or after August 18, 2020—pediatric investigations of certain targeted cancer drugs with new active ingredients, based on molecular mechanism of action rather than clinical indication. FDARA thus created a mechanism to require evaluation of certain novel medicines that may have the potential to address an unmet medical need in the pediatric population. Timely investigation in children of the antitumor activity of potentially effective targeted drugs under development in adults and of those drugs' toxicities relative to the unique growth and developmental considerations of pediatric patients, is intended to accelerate early pediatric evaluation of these products and ultimately facilitate development of appropriate new therapies for pediatric patients.

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 ''Pediatric Study Plans for Oncology Drugs: Questions and Answers.'' 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.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. 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 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: January 10, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00592 Filed 1–15–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Early Diagnosis and Prediction.

Date: February 13, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00577 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; System of Records Notice

AGENCY: National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records and rescindment of a system of records notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974,

as amended, the Department of Health and Human Services (HHS) through the National Institutes of Health (NIH) is modifying system of records 09–90–0067 to reflect that the records are now maintained by NIH, the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC) and to rename the system of records ''Invention, Patent, and Licensing Documents Related to Inventions By Public Health Service Employees, Grantees, Fellowship Recipients, and Contractors.'' In addition, HHS/NIH is rescinding a related NIH system of records, 09–25–0168.

DATES: The modified system of records is effective February 18, 2020, with the exception of the new and revised routine uses. The new and revised routine uses will be effective 30 days after publication of this notice, unless comments are received that warrant a revision to this notice. Comments should be submitted within 30 days of publication, but may be made at any time.

ADDRESSES: You may submit comments, identified by the Privacy Act system of records number 09–90–0067, by any of the following methods:

- *Federal eRulemaking Portal: http://regulations.gov.* Follow the instructions for submitting comments.
- *Email: celeste.dade-vinson@nih.gov* and include the system of records number, 09–90–0067, in the subject line of the message.
- *Phone:* (301) 402–6201.
- *Fax:* (301) 402–0169.
- *Mail:* NIH Privacy Act Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20892.
- *Hand Delivery/Courier:* 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20892.

Comments received will be available for inspection and copying at this same address from 9:00 a.m. to 3:00 p.m., Monday through Friday, federal holidays excepted.

FOR FURTHER INFORMATION CONTACT: General questions about the modified system of records may be submitted by mail or telephone to: Celeste Dade-Vinson, NIH Privacy Act Officer, Office of Management Assessment (OMA), Office of the Director (OD), National Institutes of Health (NIH), 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20892, telephone number (301) 402–6201 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Modifications to System of Records 09–90–0067

This system of records was established in 1979 or earlier (see 44 FR 58144, at 58164) by HHS' Office of General Counsel which managed the records until approximately 1993, when that responsibility was transferred to NIH and NIH established related system of records 09–25–0168 (see 58 FR 45111). Until fiscal year (FY) 2017, NIH managed all records on behalf of the relevant Public Health Service (PHS) components (NIH, FDA, and CDC) whose funding, employment, or other activities give rise to the records. Starting in FY 2017, records related to an invention arising in FY 2017 or later that is associated with only one PHS component are managed by that component, and NIH now manages only the following records for other components: (i) Records related to inventions that arose prior to FY 2017, and (ii) records related to joint inventions associated with more than one component. Consequently, HHS has decided to update the department-level system of records notice (SORN) 09–90–0067 to cover all three components' records to avoid the need for multiple component-specific SORNs, and to rescind NIH SORN 09–25–0168.

The modifications to SORN 09–90–0067 include the following substantive changes, in addition to formatting changes required by OMB Circular A–108 and minor wording changes throughout the SORN:

- The system name has been changed from ''Invention Reports Submitted to the Department of Health and Human Services by its Employees, Grantees, Fellowship Recipients, and Contractors'' to ''Invention, Patent, and Licensing Documents Related to Inventions By Public Health Service Employees, Grantees, Fellowship Recipients, and Contractors.''
- The ''System Location'' and ''System Manger(s)'' sections now provide contact information for each relevant PHS component (NIH, FDA, and CDC) instead of for OGC.
- The ''Authorities'' section, which formerly cited only 45 CFR parts 6, 7, and 8 and Executive Orders (E.O.s) 9865 and 10096, no longer cites 45 CFR parts 6 and 8 but now cites many additional authorities which were cited in NIH SORN 09–25–0168, plus these additional authorities which were not cited in that SORN: 42 U.S.C. secs. 241, 282, and 284; 37 CFR part 401; and 15 U.S.C. 3701–3708.
- The ''Categories of Records'' section now identifies more categories than just invention reports and includes the list of data elements that was in NIH SORN 09–25–0168, updated to include employing office or organization name and address, email address, phone, and fax numbers, status as Fellow or contract employee, educational degree(s), and citizenship, and to remove Social Security Number (SSN). SSN is needed only by HHS finance offices, to disburse royalty payments to an inventor; records used for disbursement and related functions are covered under another system of records (*e.g.,* 09–90–0024 HHS Financial Management System Records).
- The ''Purposes'' section, which previously stated: ''To maintain the information and patent records for the entire Department,'' now includes the four purposes described in NIH SORN 09–25–0168 (now numbered as 1, 2, 3, and 7) and three additional purposes (4, 5, and 6).
- The ''Record Source Categories'' section now includes these additional, broadened, or updated categories: Other inventors, co-inventors, collaborating persons; grantees, fellowship recipients and contractors; other federal agencies; United States and foreign patent offices; prospective licensees; PHS technology development coordinators; internet and commercial databases; and third parties who PHS contacts to determine individual invention ownership or government ownership.
- The ''Routine Uses'' section has been modified as follows:
  - It includes nine new routine uses (1, 4, 5, 6, 7, 8, 10, 11, and 14; however, closely similar versions of 5 and 10 were in NIH SORN 09–25–0168).
  - It includes three revised routine uses:
    - —*Routine use 2:* This routine use, which authorizes disclosures to a congressional office when responding to its inquiries regarding constituent requests, has been reworded to include the word ''written'' in describing the constituents' requests and the congressional office's inquiries.
    - —*Routine use 3:* Two previously separate litigation-related routine uses are now combined in routine use 3.
    - —*Routine use 9:* Six previously separate routine uses (which were combined in one routine use in NIH SORN 09–25–0168 but divided in subparts numbered a. through f.) are now combined in routine use 9 and divided in subparts numbered a. through f.
  - Two breach response-related routine uses which were published for all HHS systems of records on February 14, 2018 (see 83 FR 6591) as required by

OMB Memorandum M–17–12 are now numbered as 12 and 13.

○ Five routine uses which were in NIH SORN 09–25–0168 (numbered as 4, 5, 6, 7, and 10 in that SORN) have not been included in modified SORN 09–90–0067 because the disclosures they described would be made by other systems of record or otherwise are no longer needed for this system of records.

• The ''Storage'' section has been updated to include electronic media and to list types of portable devices that could be used, with prior HHS approval, to access and store system records.

• The ''Safeguards'' section has been updated to list additional safeguards which are now used to protect records from unauthorized access (*e.g.,* privacy and security documents and training, encryption, smart cards, biometrics, firewalls, and intrusion detection).

• The ''Retention'' section, which previously reflected that records are maintained onsite for the life of the patent (17 years) or for 7 years if the invention was not patented, and are then stored offsite at a federal records center (without indicating when they would be destroyed), now states that, currently, all records are retained in accordance with a NIH disposition schedule which provides for records to be retained for a maximum of 30 years, and that, if required, separate schedules will be developed for the records managed by FDA and CDC in FY 2017 or later.

• The ''Record Access Procedures,'' ''Contesting Record Procedures,'' and ''Notification Procedures'' sections now provide more detailed instructions for making a sufficiently specific request and now also include identity verification requirements.

II. Rescindment of NIH System of Records Notice (SORN) 09–25–0168

As modified, the department-level SORN 09–90–0067 now includes updated descriptions of the same NIH records that are covered in NIH SORN 09–25–0168. Accordingly, HHS is rescinding NIH SORN 09–25–0168 as duplicative of modified SORN 09–90–0067.

Dated: January 9, 2020.

Alfred C. Johnson,

Deputy Director for Management, National Institutes of Health.

SYSTEM NAME AND NUMBER:

Invention, Patent, and Licensing Documents Related to Inventions By Public Health Service Employees, Grantees, Fellowship Recipients, and Contractors, 09–90–0067.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of each agency component responsible for the system of records is as shown in the System Manager(s) section.

SYSTEM MANAGER(S):

The System Managers are as follows:

• *For NIH invention records, joint invention records, and records related to inventions that arose prior to FY 2017:* National Institutes of Health, Director, Office of Technology Transfer, Office of Intramural Research, Office of the Director, 6011 Executive Blvd., Suite 325, Rockville, MD 20892–7660, *nihott@mail.nih.gov,* (301) 496–7057.

• *For FDA invention records related to inventions that arose in FY 2017 or later:* Food and Drug Administration, Director, FDA Technology Transfer Program, Office of the Chief Scientist, 10903 New Hampshire Ave., Silver Spring, MD 20993, *techtransfer@fda.hhs.gov.*

• *For CDC invention records related to inventions that arose in FY 2017 or later:* Centers for Disease Control and Prevention, Associate Director for Science, Office of Technology and Innovation, 1600 Clifton Rd. NE, M/S D–42, Atlanta GA 30329–4018, *TTO@cdc.gov,* (404) 639–1330.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. secs. 3701–3710d, National Technology Transfer and Advancement Act; 35 U.S.C. secs. 200–212, Patent Rights in Inventions Made with Federal Funding Assistance; 42 U.S.C. secs. 241, 282 and 284, the Public Health Service Act; Executive Order (E.O.) 9865, Providing for the Protection Abroad of Inventions Resulting from Research Financed by the Government; and E.O. 10096, Providing for a Uniform Patent Policy for the Government with Respect to Inventions made by Government Employees and for the Administration of Such Policy. See also 37 CFR parts 401 and 404, and 45 CFR part 7.

PURPOSE(S) OF THE SYSTEM:

The records are maintained and used by HHS for these purposes:

1. To obtain patent protection for inventions reported by Public Health Service (PHS) employees, inventors, contractors, and non-profit and educational institutions to which title is owned or co-owned by the Federal Government.

2. To grant licenses to patents obtained through the invention reports.

3. To provide royalty payments to the relevant PHS employees, inventors, contractors, and non-profit and educational institutions.

4. To manage all assets of the technology transfer process (*i.e.,* marketing, statistics, technology abstracts).

5. To refer to for information needed during award processing, querying, and reporting.

6. To share relevant information with other HHS offices that manage grants, contracts, or personnel associated with the invention, including any information needed to investigate matters such as possible law, contract, or grant agreement violations and issues concerning an individual's or entity's suitability or eligibility for federal employment, contracts, grants, licenses, or other federal benefits. Records used by other HHS offices for such purposes, if retrieved by personal identifier, would be covered under other Systems of Records Notices (SORNs); see, for example, OPM/GOVT–3 covering Adverse Action Files, 09–90–0020 covering Suitability for Employment Records, and 09–90–0100 covering Civil and Administrative Investigative Files of the Inspector General.

7. To provide documentation needed for related financial management and debt collection functions, including effecting disbursements of royalty awards and payments by the Department of the Treasury (Treasury), coordinating with Treasury to recover any improper payments or other claims through offsets against federal salary and tax refund payments, and reporting royalty payments and uncollectible debt amounts to the Internal Revenue Service (IRS) as income. Records used for financial management and debt collection purposes are covered under other HHS System of Records Notices (SORNs); see, *e.g.,* HHS SORN Nos. 09–90–0024 HHS Financial Management System Records and 09–40–0012 Debt Management and Collection System for descriptions of purposes for which such records are used within HHS and routine uses for which such records may be disclosed to the Department of Treasury and other parties outside HHS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about inventors; *i.e.,* any individual involved in the development of an NIH, FDA, or CDC technology who reported an invention, applied for a patent, was granted a patent, and/or is receiving royalties from a patent to which title is owned or co-owned by the Federal Government or by a grantee, fellowship recipient, or contractor of the Federal Government. The inventor may be a PHS (or other

HHS) employee, extramural grantee, fellowship recipient, independent contractor, or other outside inventor or co-inventor.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of invention reports, patent prosecution and licensing documents (such as patent applications and license agreements) and related documents, containing all information necessary to be included in such documents, for all individuals who contributed to the invention. Applicable data elements may include: Inventor name, job title, employing office or organization name and address, contact information (mailing and email addresses, phone numbers, and fax numbers), HHS employee identification number or other unique identifier, inventor's status as a fellow or contract employee, educational degree(s), citizenship, title and description of the invention, Employee Invention Report (EIR) number, license number (if an agreement provides for royalties to be paid by a third party), number assigned to submitted invention report, case/serial number, prior art related to the invention, evaluation of the commercial potential of the invention, prospective licensees' intended development of the invention, and royalty payment information.

RECORD SOURCE CATEGORIES:

Sources of information about inventors contained in these records include the subject individual (*i.e.,* inventor); other inventors, co-inventors, and collaborating persons; grantees, fellowship recipients and contractors; other federal agencies; scientific experts from non-government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licensees; PHS technology development coordinators; internet and commercial databases; and third parties who PHS contacts to determine individual invention ownership or government ownership.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(4) through (11), information about an inventor may be disclosed from this system of records to following parties outside of HHS without the individual's prior written consent, for these purposes:

1. HHS may make the inventor's name and other information public, when making information about the invention public. For example, HHS makes the inventor's name public in the **Federal Register** and/or on the internet when it lists inventions that are available for collaboration and/or licensing (*i.e.,* to seek parties interested in licensing the invention or in undertaking collaborative research activities to further develop, evaluate, or commercialize the invention), and when publicizing results of agency research activities. Information made public without the inventor's prior, written consent would be limited to information that HHS would be required to release to a requester under the Freedom of Information Act (FOIA); meaning, information that would not result in a clearly unwarranted invasion of privacy.

2. Disclosure may be made to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

3. A record may be disclosed to the Department of Justice (DOJ) or to a court or other tribunal in litigation or other proceedings when: (a) HHS, or any component thereof; (b) any HHS employee in his/her official capacity; (c) any HHS employee in his/her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States Government, is a party to the proceeding or has a direct and substantial interest in the proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

4. Records may be disclosed to authorized federal agencies, programs, or other entities for purposes of program evaluation and assessment, including quality assurance or peer review, audit, or accreditation activities.

5. Information may be disclosed to federal agencies and HHS contractors, grantees, consultants, or volunteers who have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records and need to have access to the records in order to assist HHS. Any contractor will be required to comply with the requirements of the Privacy Act of 1974, as amended.

6. Information about an inventor may be included in information disclosed to an awardee or contractor entity in connection with the performance, administration, or evaluation of its contract under the conditions of the particular award or contract.

7. Information about an inventor may be included in contractor past performance information disclosed to a federal agency upon request.

8. As prescribed in HHS regulations, HHS may disclose system information to qualified experts not within the definition of HHS employees in order to obtain their advice about patent, licensing, and other issues involved in the transfer, among agencies, of scientific and technical discoveries.

9. HHS may disclose information from this system of records for the purpose of obtaining patent protection for HHS inventions and licenses to:

a. Scientific personnel, both in this agency and other government agencies, and in non-governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance;

b. Contract patent counsel and their employees and foreign contract personnel retained by HHS for patent searching and prosecution in both the United States and foreign patent offices;

c. All other government agencies whom HHS contacts regarding the possible use, interest in, or ownership rights in HHS inventions;

d. Prospective licensees or technology finders who may further make the invention available to the public through sale or use;

e. Parties, such as supervisors of inventors, whom HHS contacts to determine ownership rights, and those parties contacting HHS to determine the Federal Government's ownership; and,

f. The United States and foreign patent offices involved in the filing of HHS patent applications.

10. Disclosure may be made to: (a) Potential clinical trial participants, consistent with the rules and regulations governing the HHS human subjects protections program, when informing the participants of an investigator's financial interests that might be relevant for their consideration when deciding whether or not to participate in a trial (*i.e.,* if the financial interests include interests in an invention); and (b) the general public to reveal summary-level compensation that government scientists receive, under 15 U.S.C. 3710c, on licensed inventions generated during their government work.

11. HHS may disclose information to the National Archives and Records Administration (NARA), General Services Administration (GSA), or other relevant federal agencies pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

12. A record may be disclosed to appropriate agencies, entities, and

persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. A record may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

14. Records may be disclosed to the Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media (including, with prior approval, on approved portable/mobile devices such as laptops, tablets, PDAs, USB drives, media cards, portable hard drives, Blackberrys, Smartphones, CDs, DVDs, and/or other mobile storage devices) and in paper form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by inventor name or identifying number (for example, the NIH Enterprise Directory or NED ID number).

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Currently, all records are retained and disposed of in accordance with NIH records disposition schedule N1–443–10–1 and NIH Manual Chapter 1743, Keeping and Destroying Records, Appendix 1, item 1100–L, which provides for records to be kept for a maximum of thirty years. In the event that separate disposition schedules are required for records managed by FDA and CDC in FY 2017 or later, HHS will submit disposition schedules for approval by the National Archives and Records Administration (NARA) to cover those records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location or form of storage and for the types of records maintained. Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/.* Site(s) implement personnel and procedural safeguards such as the following:

- *Authorized Users:* Access is strictly limited to authorized personnel whose official duties require such access (*i.e.,* valid, business need to know).
- *Administrative Safeguards:* Controls to ensure proper protection of information and information technology systems include, but are not limited to, the completion of a Security Assessment and Authorization (SA&A) package and a Privacy Impact Assessment (PIA) and mandatory completion of annual Information Security and Privacy Awareness training. The SA&A package consists of a Security Categorization, e-Authentication Risk Assessment, System Security Plan, evidence of Security Control Testing, Plan of Action and Milestones (if applicable), Contingency Plan, and evidence of Contingency Plan Testing. When the design, development, or operation of a system of records is performed by a contractor to accomplish an agency function, the applicable Privacy Act Federal Acquisition Regulation (FAR) clauses are inserted in solicitations and contracts.
- *Technical Safeguards:* Controls that are generally executed by the computer system and are employed to minimize the possibility of unauthorized access, use, or dissemination of the data in the system include, but are not limited to, user identification, password protection, firewalls, virtual private network, encryption, intrusion detection system, common access cards, smart cards, biometrics and public key infrastructure.
- *Physical Safeguards:* Controls to secure the data and protect paper and electronic records, buildings, and related infrastructure against threats associated with their physical environment include, but are not limited to, the use of the HHS Employee ID and/or badge number and key cards, security guards, cipher locks, biometrics and closed-circuit TV. Paper records are secured in locked file cabinets, offices and facilities. Electronic media are kept on secure servers or computer systems. Records are stored in a dedicated file room or in locking file cabinets in file folders. During normal business hours, assigned agency personnel, including Records Management staff and on-site contractor personnel, regulate availability of the files. During evening and weekend hours the offices are locked.

RECORD ACCESS PROCEDURES:

An individual who wishes to access a record about him or her in this system of records must submit a written request to the relevant System Manager, reasonably specify the record sought, and include (a) the inventor's full name and address, (b) the approximate date(s) the information was submitted, (c) the type(s) of information collected, and (d) the office(s) or official(s) responsible for the collection of information. In addition, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to five thousand dollars. Individuals may also request an accounting of disclosures that have been made of any records about them.

CONTESTING RECORD PROCEDURES:

Records that contain factually incorrect information may be contested. To contest information in a record about you, write to the relevant System Manager; provide the same information described under ''Record Access Procedures,'' including identity verification information; and specify the information which is contested, the corrective action sought, and the reason(s) for requesting the correction, along with supporting information. The right to contest records is limited to information which is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains a record about him or her must write to the relevant System Manager and provide the same information described under ''Record Access Procedures,'' including identity verification information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

47 FR 45514 (Oct. 13, 1982), 59 FR 55845 (Nov. 9, 1994), 83 FR 6591 (Feb. 14, 2018).

NOTICE OF RESCINDMENT:

The following system of records is rescinded as duplicative of system 09–90–0067:

SYSTEM NAME AND NUMBER:

Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, 09–25–0168.

HISTORY:

71 FR 46496 (Aug. 14, 2006), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2020–00633 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management of Patients in Community-Based Settings Study Section.

Date: February 10–11, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 827–8269, *fordycelm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Clinical Studies of Mental Illness.

Date: February 11, 2020.

Time: 1:15 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology AREA Review.

Date: February 12, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urology and Urogynecology.

Date: February 13, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Julia Spencer Barthold, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3073, *julia.barthold@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cellular and Molecular Biology of Complex Brain Disorders.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genomics, Computational Biology and Technology.

Date: February 13, 2020.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3702, *christopher.payne@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery Systems.

Date: February 14, 2020.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00578 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC SBIR PHS 2020–1 Topic 85: Broad spectrum antibody against human enteroviruses.

Date: February 10, 2020.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National

Institute of Allergies and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room #3G13B, Rockville, MD 20892–7616, (240) 669–5048, *gaoL2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 10, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00576 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2019 Omnibus BAA (HHS–NIH–NIAID–BAA2019–1) Research Area 004: Characterizing and Improving Humanized Immune System Mouse Models (IMM–HIS).

Date: February 12, 2020.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rm 3G42B Bethesda, MD 20892–9834, (240) 669–5070, *rosenthalla@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 10, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00575 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 12:00 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: Nakia C. Brown, Ph.D., Scientific Review Officer, National Institutes of Health, NIAMS, 6701 Democracy Blvd., Room 816, Plaza One, Bethesda, MD 20892, (301) 827–4905, *brownnac@mail.nih.gov.*

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, National Institutes of Health, NIAMS, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, (301) 594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00579 Filed 1–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given of the meeting on February 20, 2020 of the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC).

The meeting is open to the public and can be accessed remotely. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

The meeting will include consideration of the minutes from the August 21, 2019, SAMHSA, CMHS NAC meeting; updates from the CMHS Director and SAMHSA Policy Lab Director; presentation from the National Academies of Sciences, Engineering, and Medicine; and discussions on Trauma Informed Care and Certified Community Behavioral Health Clinics.

DATES: Thursday, February 20, 2020, 9:00 a.m. to 3:30 p.m., EDT, (OPEN).

ADDRESSES: The meeting will be held at SAMHSA Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Designated Federal Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 14E57B, Rockville, Maryland 20857, Telephone: (240) 276–1279, Fax: (301) 480–8491, Email: *pamela.foote@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Attendance by the public is limited to space availability. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Individuals interested in sending written submissions or making public comments, must forward them and notify the contact person on or before

February 7, 2020. Up to three minutes will be allotted for each presentation.

Registration is required to participate during this meeting. To attend in person, virtually, or to obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at: *http://snacregister.samhsa.gov/MeetingList.aspx* or communicate with the CMHS NAC Designated Federal Officer; Pamela Foote.

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA website at: *http://www.samhsa.gov/about-us/advisory-councils/cmhs-national-advisory-council* or by contacting the CMHS NAC Designated Federal Officer; Pamela Foote.

Council Name: Substance Abuse and Mental Health Services Administration Center for Mental Health Services National Advisory Council.

Dated: January 10, 2020.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2020–00584 Filed 1–15–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0048]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for Premium Processing Service

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 18, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0048 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on October 02, 2019, at 84 FR 52527, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0025 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected through this form to process a request for premium processing. The form serves the purpose of standardizing requests for premium processing, and will ensure that basic information required to assess eligibility is provided by the employers/petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–907 is 319,301 and the estimated hour burden per response is 0.58 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 185,195 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $79,426,124.

Dated: January 10, 2020.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–00564 Filed 1–15–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0040]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Employment Authorization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 16, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0040 in the body of the letter, the agency name and Docket ID USCIS–2005–0035. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0035;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0035 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 is 2,286,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection Biometric Processing is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Form I–765WS is 302,000 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for the information collection Passport-Style Photographs is 2,286,000 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,934,966 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

Dated: January 10, 2020.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–00563 Filed 1–15–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N009; FXES11140400000–178–FF04EF2000]

Receipt of Proposed Habitat Conservation Plan for Sand Skink and Blue-Tailed Mole-Skink and Application To Amend Incidental Take Permit; Osceola County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application to amend an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended. K. Hovnanian at Mystic Dunes, LLC (applicant) is requesting to modify its 5-year ITP authorizing take of federally listed sand skink and blue-tailed mole skink incidental to construction in Osceola County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 18, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by any of the following methods:

- *Telephone:* Alfredo Begazo, 772–469–4234.
- *Email: alfredo_begazo@fws.gov.*
- *U.S. mail:* Alfredo Begazo, South Florida Ecological Services Office, Attn. Sunbeam Properties, Inc. Permit TE69951C–1, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during regular business hours at the above address. Please call to make an appointment.
- *Fax:* Alfredo Begazo, 772–562–4288, Attn: Permit number TE69951C–1.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4234. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, announce receipt of an application from K. Hovnanian at Mystic Dunes, LLC to amend an existing 5-year incidental take permit (ITP) that was issued for take of the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregious*) (skinks) incidental to construction of a residential development (project) in Osceola County, Florida. The applicant seeks to amend the ITP (ITP TE69951C–1) to account for take of 2.09 acres (ac) of occupied skink habitat rather the 6.7 ac currently authorized by the permit. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests to amend its ITP to account for take of skinks via the conversion of 2.09 ac of habitat occupied for foraging and sheltering. The take would be incidental to the construction of a residential development on a 9-ac parcel in Section 15, Township 25 South, and Range 27 East, Osceola County, Florida. The applicant proposes to mitigate for the take by purchasing a number of credits equivalent to 4.18 ac of occupied skink habitat from a Service-approved conservation bank in Osceola County. The applicant would be required to purchase the credits prior to engaging in project activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that modification of the applicant's ITP and the project, including land clearing, construction of the residential development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on skinks and the environment. Therefore, we have preliminarily concluded that the amended ITP would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments to determine whether to amend the permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the revised take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will amend the current permit and issue ITP number TE69951C–1 to K. Hovnanian at Mystic Dunes, LLC for incidental take of the sand skink and blue-tailed skink.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2020–00631 Filed 1–15–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N004; FXES11140400000–178–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Sand Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Ernie Caldwell Properties, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 18, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by any of the following methods:

- *Telephone:* Alfredo Begazo, 772–469–4234.
- *Email: alfredo_begazo@fws.gov.*
- *U.S. mail:* Alfredo Begazo, South Florida Ecological Services Office, Attn. Sunbeam Properties, Inc. Permit TE54008D–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during regular business hours at the above address. Please call to make an appointment.
- *Fax:* Alfredo Begazo, 772–562–4288, Attn: Permit number TE54008D–0.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), or via phone at 772–469–4234. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Ernie Caldwell Properties, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential development project in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

Ernie Caldwell Properties, LLC, requests a 10-year ITP to take sand skink by converting approximately 7.81 acres of occupied skink foraging and sheltering habitat incidental to construction of a residential development on a 122.57-acre parcel in Section 15, Township 26 South, Range 27 East, Polk County, Florida. The applicant proposes to mitigate for take of the sand skink by purchasing credits equivalent to 15.62 acres of skink-occupied habitat from a Service-approved mitigation bank in Polk County. The Service would be required to purchase the credits prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of the residential development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on the sand skink and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE54008D–0 to Ernie Caldwell Properties, LLC for incidental take of sand skink.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2020–00630 Filed 1–15–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000.19X.L13140000.PP0000; OMB Control Number 1004–0207]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil and Gas Facility Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Bureau of Land Management (BLM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before February 18, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Chandra Little; or by email to *cclittle@blm.gov.* Please reference OMB Control Number 1004–0207 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Michael Wade by email at *mwade@blm.gov,* or by telephone at 303–239–3737. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 11, 2019 (84 FR 47970). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. This control number pertains to site security for Federal and Indian (except Osage Tribe) oil and gas leases. In this ICR, the BLM requests the removal of several activities involving the use of BLM Form 3160–5 (Sundry Notices and Reports on Wells). At the BLM's request, OMB authorized transfer of those activities from control number 1004–0207 to control number 1004–0137 (Onshore Oil and Gas Operations and Production).

Title of Collection: Oil and Gas Facility Site Security.

OMB Control Number: 1004–0207.

Forms: None.

Type of Review: Revision of a currently approved collection.

Description of Respondents: Lessees, operators, purchasers, transporters, and any other person directly involved in producing, transporting, purchasing, selling, or measuring oil or gas through the point of royalty measurement or the point of first sale, whichever is later.

Total Estimated Number of Annual Respondents: 5,000.

Total Estimated Number of Annual Responses: 93,975.

Estimated Completion Time per Response: Varies from 0.25 to 10 hours per response.

Total Estimated Number of Annual Burden Hours: 69,640.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Chandra Little,

Bureau of Land Management, Acting Information Collection Clearance Officer.

[FR Doc. 2020–00612 Filed 1–15–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000 L51010000.ER0000 LVRWB09B2920 19X; MO 4500140990]

Notice of Availability of the Record of Decision for the Desert Quartzite Solar Photovoltaic Project, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) to Authorize a Right-of-Way (ROW) and amend the California Desert Conservation Area (CDCA) Plan for the Desert Quartzite Solar Photovoltaic Project, and by this Notice is announcing its availability. This decision is subject to appeal under Departmental regulations.

DATES: The Acting Assistant Secretary for Land and Minerals Management signed the ROD on January 9, 2020.

ADDRESSES: Copies of the ROD are available for public inspection at the BLM-Palm Springs-South Coast Field Office at 1201 Bird Center Dr., Palm Springs, CA 92262, and at the BLM-California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Interested persons may also review the ROD on the internet at: *https://tinyurl.com/yy8o33ld.*

FOR FURTHER INFORMATION CONTACT: Brandon G. Anderson, BLM Assistant District Manager, Project Support, telephone (951) 697–5215; address, Bureau of Land Management, California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553; or email *blm_ca_desert_quartzite_solar_project@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at (800) 877–8339 to contact Mr. Anderson normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Desert Quartzite, LLC, a wholly owned subsidiary of First Solar Inc., applied for a ROW from the BLM to construct, operate, maintain, and decommission a 450-megawatt (MW) solar photovoltaic facility near the City of Blythe, Riverside County, California. The proposed project footprint is about

3,800 acres. The proposed project also includes construction of a 2.7 mile 230 kilovolt generation interconnection (gen-tie) transmission line connecting the project to the Southern California Edison (SCE) Colorado River Substation. The BLM also considered an amendment to the CDCA Plan that would be necessary to authorize the project. This is a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for compliance with NEPA and the California Environmental Quality Act (CEQA). Riverside County is the lead agency under CEQA.

On August 8, 2018, the BLM issued the Draft EIS/EIR and Draft Land Use Plan Amendment, which analyzed the impacts of the Proposed Action and two action alternatives, in addition to a No Action Alternative. Alternative 2, Resource Avoidance Alternative, would be a 450 MW Photovoltaic (PV) array on about 2,800 acres. It reduces effects to portions of the sand corridor and cultural resources. Alternative 3, Reduced Project Alternative, would be a 285 MW solar PV project on about 2,100 acres. Like the Proposed Action, under each of these alternatives, the BLM would amend the CDCA Plan to allow the project. Under the No Action Alternative, the BLM would deny the ROW application, and would not amend the CDCA Plan to allow the project.

The Draft EIS/EIR and Draft Land Use Plan Amendment included analysis of the ROW application as it related to the following issues: (1) Impacts to cultural resources and tribal concerns; (2) Impacts to the sand transport corridor and Mojave fringe-toed lizard habitat and washes; (3) Impacts to BLM sensitive plants; (4) Impacts to avian species; (5) Impacts to visual resources; (6) Impact to air and water quality; and (7) Relationship between the proposed project and the CDCA Plan, as amended.

The Draft EIS/EIR and Draft Land Use Plan Amendment was available for a 90-day public comment period. The BLM held public meetings on September 26, 2018, and September 27, 2018, in Palm Desert and Blythe, CA respectively. Fourteen individuals attended the meeting on September 26, 2018, and 19 individuals attended the meeting on September 27, 2018. The BLM received two verbal comments during the September 27, 2018, public meeting and 22 comment letters during the comment period.

Comments on the Draft EIS/EIR and Draft Land Use Plan Amendment received from the public and internal agency review were considered and incorporated, as appropriate, into the Final EIS/EIR and Proposed Land Use Plan Amendment. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use plan decisions. A response to substantive comments is included in the Final EIS/EIR and Proposed Land Use Plan Amendment. Under Alternative 2 and Alternative 3, the gen-tie alignment was adjusted to avoid a potential conflict with a proposed transmission line project. The adjustment does not substantially change the environmental effects analysis. The BLM has selected Alternative 2, the Resource Avoidance Alternative, as the Agency Proposed Alternative in the Final EIS/EIR and Proposed Land Use Plan Amendment.

The publication of the Desert Quartzite Final EIS/EIR and Proposed Land Use Amendment initiated a 30-day protest period, which closed on October 28, 2019. The BLM received two protests. The BLM has considered and resolved the protests on the Desert Quartzite Solar Project Final EIS/EIR and Proposed Land Use Amendment. The BLM's protest resolution report to those protests can be found at *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.*

In accordance with the regulations at 43 CFR 1610.3–2(e), the BLM submitted the Final EIS/EIR and Proposed Land Use Amendment for a 60-day Governor's Consistency Review on September 27, 2019. The Governor did not respond with any findings of inconsistency.

With this ROD, the BLM adopts the Agency Preferred Alternative and amends the CDCA Plan. Approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR part 4. Any challenge to these decisions, including the BLM Authorized Officer's issuance of the right-of-way as approved by this decision, must be brought in the Federal district court.

Joe Stout,

Acting State Director.

[FR Doc. 2020–00611 Filed 1–15–20; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act and the Federal Debt Collection Procedures Act

On January 10, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States of America* v. *Punch It Performance and Tuning, et al.,* Civil Action No. 6:19–cv–01115–RBD–EJK.

The Complaint in this Clean Air Act (''CAA'') case was filed against Punch It Performance and Tuning LLC; D N S Enterprises of Florida, Inc.; REI Research Group, Inc.; Michael Paul Schimmack; Vanessa Schimmack; and Lori Brown (''Defendants'') on June 14, 2019. The Complaint alleges civil violations of the CAA, and the fraudulent transfer of assets under the Federal Debt Collection and Procedures Act (''FDCPA''). Specifically, the Complaint alleges that certain Defendants manufactured and sold devices that defeat motor vehicle emission controls that are illegal under Section the CAA. The Complaint further alleges that, after the Defendants learned of federal enforcement efforts, assets were fraudulently transferred from two of the companies to Michael Paul Schimmack, Vanessa Schimmack, and Lori Brown in violation of the FDCPA.

Under the proposed Consent Decree, the Defendants (1) will pay, in three installments over one year, $850,000 in civil penalties, (2) are prohibited from manufacturing or selling products in violation of the CAA, tampering with a vehicle's emission control system, providing technical support for products that have already been sold in violation of the CAA, and transferring any intellectual property that could be used to manufacture defeat devices and (3) must periodically submit compliance reports and reports on their future involvement in the automotive industry. Both the payment schedule and the amount of civil penalties reflect Defendants' documented limited financial ability to pay.

The Publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Punch It Performance and Tuning, et al.,* D.J. Ref. No. 90–5–2–1–11965. Comments may be submitted by either email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC, 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–00558 Filed 1–15–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice and request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 16, 2020.

ADDRESSES: You may submit comments identified by Control Number 1235–0002, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) safeguards migrant and seasonal agricultural workers in their interactions with Farm Labor Contractors, Agricultural Employers and Agricultural Associations, and providers of migrant farm worker housing. *See* Public Law 97–470. The MSPA requires Farm Labor Contractors, Agricultural Employers, and Agricultural Associations, who recruit, solicit, hire, employ, furnish, transport, or house agricultural workers, as well as providers of migrant housing, to meet certain minimum requirements in their dealings with migrant and seasonal agricultural workers. Various sections of the MSPA require respondents (*e.g.,* Farm Labor Contractors, Agricultural Employers, and Agricultural Associations to disclose terms and conditions in writing to their workers. MSPA sections 201(g) and 301(f) requires that the DOL make forms available to provide such information. The DOL prints and makes optional-use form WH–516, Worker Information—Terms and Conditions of Employment.

MSPA sections 201(d) and 301(c)—29 U.S.C. 1821(d), 1831(c) and regulations 29 CFR 500.80(a), require each Farm Labor Contractor, Agricultural Employer, and Agricultural Association that employs a migrant or seasonal worker to make, keep, and preserve records for three years for each such worker concerning the: (1) Basis on which wages are paid; (2) number of piece work units earned, if paid on a piece work basis; (3) number of hours worked; (4) total pay period earnings; (5) specific sums withheld and the purpose of each sum withheld; (6) net pay. Respondents are also required to provide an itemized written statement of this information to each migrant and seasonal agricultural worker each pay period. *See* 29 U.S.C. 1821(d), 1831(c), and 29 CFR 500.1–.80(d). Additionally, MSPA sections 201(e) and 301(d) require each Farm Labor Contractor provide copies of all the records noted above for the migrant and seasonal agricultural workers the contractor has furnished to other Farm Labor Contractors, Agricultural Employers, or Agricultural Associations who use the workers. Respondents must also make and keep certain records. Section 201(c) of the MSPA requires all Farm Labor Contractors, Agricultural Employers, and Agricultural Associations providing housing to a migrant agricultural worker to post in a conspicuous place at the site of the housing, or present to the migrant worker, a written statement of any housing occupancy terms and conditions. *See* 29 U.S.C. 1821(c); 29 CFR 500.75. In addition, MSPA section 201(g) requires them to provide such information in English, or as necessary and reasonable, in a language common to the workers. *See* 29 U.S.C. 1821(g). The provision also requires DOL make the optional forms available to provide

the required disclosures. *See* 29 U.S.C. 1821(g); 29 CFR 500.1(i)(2).

II. Review Focus: The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- 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 submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the Migrant and Seasonal Agricultural Worker Protection Act.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Disclosure to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1235–0002.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Agency Numbers: Forms WH–501 (English and Spanish versions), WH–516 (English, Spanish and Haitian Creole versions), and WH–521.

Total Respondents: 94,729.

Total Annual Responses: 71,127,083.

Estimated Total Burden Hours: 1,200,453.

Estimated Time per Response: Various.

Frequency: On occasion.

Total Burden Cost (capital/startup/operation/maintenance): $2,845,083.

Dated: January 10, 2020.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2020–00562 Filed 1–15–20; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (20–001)]

NASA Datanaut Applicant Selection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—renewal of existing information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by February 18, 2020.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection of information supports the selection process of individuals to participate in the NASA Datanaut program. NASA's corps of Datanauts features leaders from across the data/maker/tech communities with diverse skill sets who use data in innovative ways. This corps of creative thinkers are interested in engaging with NASA and pioneering the future of exploration-focused data science. Datanauts are citizens personally and/or professionally invested in the use and applications of NASA data. Members have unique early opportunities to test datasets and tools, uncover new use cases for NASA data, and have their visualization, application or storytelling work featured by NASA.

This information will be used by the NASA Datanaut administrative personnel, during the application selection process, to gain insight into the applicant's interest and skill level in data analysis and visualization. Information collected will be limited to full name, city, state and country of origin, email, biography, background experience and biography.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Datanaut Application.

OMB Number:

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2.

Estimated Number of Respondents per Activity: 500.

Annual Responses: 1,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 333.

Estimated Total Annual Cost: $5,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2020–00553 Filed 1–15–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the *second notice* for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the

proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding this information collection are best assured of having their full effect if received by February 18, 2020.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF 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.

Comments regarding (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 burden 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 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 should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Grantee Reporting Requirements for Prediction of and Resilience against Extreme Events (PREEVENTS).

OMB Number: 3145–0244.

Proposed Project: NSF and the Directorate for Geosciences (GEO) have long supported basic research in scientific and engineering disciplines necessary to understand natural hazards and extreme events. The Prediction of and Resilience against Extreme Events (PREEVENTS) program is one element of the NSF-wide Risk and Resilience activity, which has the overarching goal of improving predictability and risk assessment, and increasing resilience, in order to reduce the impact of extreme events on our life, society, and economy. PREEVENTS provides an additional mechanism to support research and related activities that will improve our understanding of the fundamental processes underlying natural hazards and extreme events in the geosciences.

PREEVENTS is intended to encourage new scientific directions in the domains of natural hazards and extreme events. PREEVENTS will consider proposals for conferences that will foster development of interdisciplinary or multidisciplinary communities required to address complex questions surrounding natural hazards and extreme events. Such proposals are called PREEVENTS Track 1 proposals.

In addition to standard NSF annual and final report requirements, PIs for all PREEVENTS Track 1 awards will be required to submit to NSF a public report that summarizes the conference activities, attendance, and outcomes; describes scientific and/or technical challenges that remain to be overcome in the areas discussed during the conference; and identifies specific next steps to advance knowledge in the areas of natural hazards and extreme events that were considered during the conference. These reports will be made publicly available via the NSF website, and are intended to foster nascent interdisciplinary or multidisciplinary communities and to enable growth of new scientific directions.

Use of the Information: NSF will use the information to understand and evaluate the outcomes of the conference, to foster growth of new scientific communities, and to evaluate the progress of the PREEVENTS program.

Estimate of Burden: 40 hours per award for 5–10 conference awards for a total of 200–400 hours.

Respondents: Universities and Colleges; Non-profit, non-academic organizations; For-profit organizations; NSF-funded Federally Funded Research and Development Centers (FFRDCs).

Estimated Number of Responses per Report: One from each five to ten Track 1 awardees.

Dated: January 13, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–00654 Filed 1–15–20; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 15Fi–2—Trade Acknowledgment and Verification of Security-Based Swap Transactions, SEC File No. 270–633, OMB Control No. 3235–0713

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15Fi–2 (17 CFR 240.15Fi–2) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 15Fi–2 requires security-based swaps (''SBS'') dealers and major SBS participants (collectively, ''SBS Entities'') to provide to their counterparties a trade acknowledgment, to provide prompt verification of the terms provided in a trade acknowledgment of transactions from other SBS Entities, and to have written policies and procedures that are reasonably designed to obtain prompt verification of the terms provided in a trade acknowledgment. The Rule promotes the efficient operation of the SBS market and facilitate market participants' management of their SBS-related risk.

The Commission estimates that approximately 50 entities fit within the definition of SBS dealer, and up to five entities fit within the definition of major SBS participant. Thus, we expect that approximately 55 entities will be required to register with the Commission as SBS Entities and will be subject to the trade acknowledgment provision and verification requirements of Rule 15Fi–2. The total estimated annual burden of Rule 15Fi–2 is 34,155 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 10, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00559 Filed 1–15–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87943; File No. S7–27–11]

Order Extending Temporary Exemptions From Exchange Act Section 8 and Exchange Act Rules 8c–1, 10b–16, 15a–1, 15c2–1 and 15c2–5 in Connection With the Revision of the Definition of ''Security'' To Encompass Security-Based Swaps

January 10, 2020.

I. Introduction

The Securities and Exchange Commission (''Commission'') is extending until November 5, 2020, temporary exemptions from Section 8 [1] of the Securities Exchange Act of 1934 (''Exchange Act'') and from Exchange Act Rules 8c–1, 15c2–1, 10b–16, 15c2–5, and 15a–1 [2] in connection with the revision of the definition of ''security'' to encompass security-based swaps. The Commission is granting this nine-month extension because it believes the temporary exemptions from these provisions warrant further consideration to take into account the finalized regulatory regime for security-based swap dealers and major security-based swap participants, as well as the compliance date for registration of those entities.[3]

These and other temporary exemptions were originally provided by the Commission in 2011 and periodically extended by the Commission, most recently in January 2019.[4] The remainder of the temporary exemptions extended in January 2019, and not extended in this Order, will expire on February 5, 2020.[5]

II. Discussion

A. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act [6] amended the definition of ''security'' under the Exchange Act to expressly encompass security-based swaps.[7] The expansion of the definition of the term ''security'' to include security-based swaps had the effect of changing the scope of the Exchange Act regulatory provisions that apply to security-based swaps and, in doing so, raised certain complex questions that required further consideration.

In July 2011, the Commission issued an order (the ''2011 Exchange Act Exemptive Order''), which granted two relevant temporary exemptions from compliance with certain provisions of the Exchange Act, and the rules and regulations thereunder. First, the Commission granted to any person who meets the definition of ''eligible contract participant'' set forth in Section 1a(12) of the Commodity Exchange Act as in effect on July 20, 2010 (*i.e.,* the day prior to the date the Dodd-Frank Act was signed into law) and who is not a registered broker or dealer [8] or a self-regulatory organization [9] a temporary exemption from certain provisions of the Exchange Act, and the rules and regulations thereunder, solely in connection with the person's activities involving security-based swaps.[10] Second, the Commission granted to a broker or dealer registered under Section 15(b) of the Exchange Act (other than a broker or dealer registered under Section 15(b)(11) of the Exchange Act), a temporary exemption from certain provisions of the Exchange Act, and the

[1] 15 U.S.C. 78h.

[2] 17 CFR 240.8c–1, 240.15c2–1, 240.10b–16, 240.15c2–5 and 240.15a–1.

[3] Because the Commission ultimately may determine not to provide permanent exemptions for security-based swaps from one or more of these provisions, during the extension market participants may wish to consider how they would design and implement appropriate compliance measures and controls.

[4] *See* Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (''2011 Exchange Act Exemptive Order''); *see also* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (Aug. 13, 2012) (extending the expiration date of the temporary exemptions to February 11, 2013); Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 68864 (Feb. 7, 2013), 78 FR 10218 (Feb. 13, 2013) (extending the expiration date of the temporary exemptions to February 11, 2014); Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR 7731 (Feb. 10, 2014) (''2014 Extension Order'') (extending the expiration date for certain temporary exemptions to February 5, 2017); Order Extending Certain Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' To Encompass Security-Based Swaps and Request for Comment, Exchange Act Release No. 79833 (Jan. 18, 2017), 82 FR 8467 (Jan. 25, 2017) (extending the expiration date for certain temporary exemptions to February 5, 2018); Order Extending Until February 5, 2019 Certain Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps and Request for Comment, Exchange Act Release No. 82626 (Feb. 2, 2018), 83 FR 5665 (Feb. 18, 2018) (''2018 Extension Order'') (extending the expiration date for certain temporary exemptions to February 5, 2019); Order Granting a Limited Exemption from the Exchange Act Definition of ''Penny Stock'' for Security-Based Swap Transactions between Eligible Contract Participants; Granting a Limited Exemption from the Exchange Act Definition of ''Municipal Securities'' for Security-Based Swaps; and Extending Certain Temporary Exemptions under the Exchange Act in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 84991 (Jan. 25, 2019), 84 FR 863 (Jan. 31, 2019) (''January 2019 Extension Order'') (extending the expiration date for certain temporary exemptions to February 5, 2020).

[5] *See* January 2019 Extension Order, 84 FR at 864–65.

[6] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[7] *See* Section 761(a)(2) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10)). The provisions of Title VII generally became effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act) (the ''Effective Date''), unless a provision required a rulemaking, in which case the provision would go into effect ''not less than'' 60 days after publication of the related final rules in the **Federal Register** or on July 16, 2011, whichever is later. *See* Section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

[8] This temporary exemption is available to a broker or dealer registered under Section 15(b)(11) of the Exchange Act who meets the other eligibility criteria for this relief. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938.

[9] This temporary exemption is available to a self-regulatory organization in limited circumstances. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938–39.

[10] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39938–39.

rules and regulations thereunder, solely with respect to security-based swaps.[11]

The overall approach of the 2011 Exchange Act Exemptive Order was directed toward maintaining the *status quo* during the implementation process for the Dodd-Frank Act.[12] In the 2011 Exchange Act Exemptive Order, the Commission stated that it would accomplish this ''by preserving the application of particular Exchange Act requirements that already are applicable in connection with instruments that will be 'security-based swaps' following the Effective Date [of the Dodd-Frank Act], but deferring the applicability of additional Exchange Act requirements in connection with those instruments explicitly being defined as 'securities' as of the Effective Date.'' [13]

1. 2014 Extension Order

In 2014, the Commission extended the expiration dates for the temporary exemptions in the 2011 Exchange Act Exemptive Order.[14] The Commission distinguished between: (1) The temporary exemptions related to pending security-based swap rulemakings (''Linked Temporary Exemptions''), the expiration dates for which were extended to the compliance dates for the specific rulemakings to which they were ''linked''; and (2) the temporary exemptions that generally were not directly related to a specific security-based swap rulemaking (''Unlinked Temporary Exemptions''), the expiration date for which was extended to the earlier of three years following the effective date of the 2014 Extension Order (*i.e.,* February 5, 2017) or such time that the Commission issues an order or rule determining whether continuing exemptive relief is appropriate for security-based swaps with respect to any such Unlinked Temporary Exemptions.[15] This approach was designed to provide the Commission with flexibility, while its Dodd-Frank Act rulemaking is still in progress, to determine whether continuing relief should be provided for any of the Unlinked Temporary Exemptions.[16]

2. 2018 Extension Order and January 2019 Extension Order

In 2018, the Commission extended the expiration date of the Unlinked Temporary Exemptions until February 5, 2019.[17] The Commission also requested comment on whether continuing exemptive relief was necessary beyond February 5, 2019.[18] The Commission received four letters from two different commenters in response.[19] One of these comments requested that the Commission make permanent a limited number of the Unlinked Temporary Exemptions.[20] The commenter also requested an additional twelve-month transition period before the expiration of the remaining Unlinked Temporary Exemptions.[21] The commenter argued that market participants would use the additional time to ''further analyze the applicability of [Exchange Act provisions and rules] to their [security-based swap] business and design and implement appropriate compliance measures, including, where relevant, controls designed to prevent or detect activity that might potentially trigger these provisions.'' [22] In response, the Commission provided limited

[11] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39939. The 2011 Exchange Act Exemptive Order did not provide exemptive relief for any provisions or rules prohibiting fraud, manipulation, or insider trading (other than prophylactic reporting or recordkeeping requirements such as the confirmation requirements of Exchange Act Rule 10b-10). In addition, the 2011 Exchange Act Exemptive Order did not affect the Commission's investigative, enforcement, and procedural authority related to those provisions and rules. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39931 n.34. The 2011 Exchange Act Exemptive Order also did not address Sections 12, 13, 14, 15(d), 16, and 17A of the Exchange Act and the rules and regulations thereunder.

[12] *See* 2011 Exchange Act Exemptive Order, 76 FR at 39929.

[13] 2011 Exchange Act Exemptive Order, 76 FR at 39929. Under the 2011 Exchange Act Exemptive Order, instruments that (before the Effective Date) were security-based swap agreements and (after the Effective Date) constituted security-based swaps were still subject to the application of those Exchange Act provisions. *See* 2011 Exchange Act Exemptive Order, 76 FR at 39930 nn.24–25.

[14] *See* 2014 Extension Order, 79 FR at 7734–35.

[15] *See* 2014 Extension Order, 79 FR at 7732–35.

[16] *See* 2014 Extension Order, 79 FR at 7731. The 2014 Extension Order referred to the temporary exemptions provided for in the 2011 Exchange Act Exemptive Order as the ''Expiring Temporary Exemptions'' and noted that the 2011 Exchange Act Exemptive Order generally provided for the following exemptions from the Exchange Act: ''(a) temporary exemptions in connection with security-based swap activity by certain 'eligible contract participants'; and (b) temporary exemptions specific to security-based swap activities by registered brokers and dealers.''

The 2014 Extension Order identified the Linked Temporary Exemptions as those Expiring Temporary Exemptions related to: (1) Capital and margin requirements applicable to a broker or dealer (Exchange Act Sections 7 and 15(c)(3), Regulation T, and Exchange Act Rules 15c3–1, 15c3–3, and 15c3–4); (2) recordkeeping requirements applicable to a broker or dealer (Exchange Act Sections 17(a) and 17(b) and Exchange Act Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13); (3) registration requirements under Exchange Act Section 15(a)(1), and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a ''broker'' or ''dealer'' that is not registered with the Commission; (4) Exchange Act Rule 10b–10; and (5) Regulation ATS. The remaining Expiring Temporary Exemptions are the Unlinked Temporary Exemptions.

As applicable, the Commission extended the Linked Temporary Exemptions until the compliance date for pending rulemakings concerning: Capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants; recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants; security-based swap trade acknowledgement and verification; and registration requirements for security-based swap execution facilities. The Linked Temporary Exemptions are not addressed in this order and have been, or will be, separately considered in connection with the related security-based swap rulemakings. *See, e.g.,* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43955–56 (Aug. 22, 2019); Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Sept. 19 2019), 84 FR 68550, 68601–02 (Dec. 16, 2019); Trade Acknowledgement and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807, 39824–25 n.189 (June 17, 2016).

[17] *See* 2018 Extension Order.

[18] Comments received are available at *https://www.sec.gov/comments/s7-27-11/s72711.shtml.*

[19] *See* letter from Kyle Brandon, Managing Director, SIFMA, dated Nov. 8, 2018 (''SIFMA November 2018 Letter'') (requesting that the Commission further extend the Unlinked Temporary Exemptions, and also requesting certain permanent exemptive and other relief); supplemental letter from Kyle Brandon, Managing Director, SIFMA, dated Dec. 20, 2018 (''SIFMA December 2018 Letter'') (supplementing the SIFMA November 2018 Letter with additional detail regarding the Unlinked Temporary Exemptions and recommending a twelve-month transition period before expiration of any Unlinked Temporary Exemptions); *see also* letters from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association, dated Nov. 18 and Nov. 29, 2018 (each expressing support for codifying the exemptions for security-based swaps from inapplicable securities rules).

[20] *See* SIFMA December 2018 Letter at 3 (request for exemption from the definition of ''penny stock''); SIFMA December 2018 Letter at 3–4 (request for guidance regarding the definition of ''municipal securities''); SIFMA December 2018 Letter at 3–4 (request for guidance regarding the definition of ''government securities''); SIFMA December 2018 Letter at 4–5 (request for exemption from fees under Section 31 of the Exchange Act); SIFMA December 2018 Letter at 5 (request for exemption from hypothecation requirements); SIFMA December 2018 Letter at 5–6 (request for exemption from broker-dealer disclosure requirements relating to extensions of credit); SIFMA December 2018 Letter at 6 (request for exemption from qualification requirements for personnel of broker-dealers); SIFMA December 2018 Letter at 6 (request for exemption from fingerprinting requirements for personnel of broker-dealers); SIFMA December 2018 Letter at 6–7 (request for exemption to permit OTC derivatives dealers to transact in centrally cleared or listed security-based swaps); SIFMA December 2018 Letter at 7 (request for exemption to permit exchange members to engage in security-based swap transactions without losing an existing limited exemption from the requirement to be a member of a national securities association); SIFMA December 2018 Letter at 7 (request for exemption from audit and compensation committee requirements).

[21] *See* SIFMA December 2018 Letter at 1, 7.

[22] *See* SIFMA December 2018 Letter at 7.

exemptions from the definition of ''penny stock'' in Section 3(a)(51) of the Exchange Act and Rule 3a51–1 for transactions in security-based swaps between eligible contract participants and from the definition of ''municipal securities'' in Section 3(a)(29) of the Exchange Act for security-based swaps.[23] The Commission also extended the Unlinked Temporary Exemptions until February 5, 2020, providing a twelve-month transition period to allow market participants adequate time to design and implement appropriate compliance measures and controls.[24]

On January 8, 2020, the Commission received a letter from the same commenter supplementing its earlier request.[25] The commenter updated its requests to make permanent the three aspects of the Unlinked Temporary Exemptions: (1) Limitations on hypothecation of securities carried for the account of a customer in Section 8 of the Exchange Act and in Exchange Act Rules 8c–1 and 15c2–1,[26] (2) broker-dealer disclosure requirements relating to extensions of credit in Exchange Act Rules 10b–16 and 15c2–5,[27] and (3) certain limitations on an OTC derivatives dealer's activities in Exchange Act Rule 15a–1.[28] In the alternative, the commenter requested that the Commission extend the Unlinked Temporary Exemptions relating to these requests for an additional twelve months so that the Commission may further consider the requests.[29] The commenter also confirmed that it was no longer requesting additional extensions for any other Unlinked Temporary Exemptions.[30]

B. Temporary Exemptions

The Commission has finalized a majority of the rulemakings under Title VII of the Dodd-Frank Act.[31] Specifically, the Commission has finalized the registration and regulatory regime for security-based swap dealers and major security-based swap participants and set the compliance date for registration of those entities (''Registration Compliance Date''). The Commission believes that it would be appropriate to provide market participants limited additional time to consider the impact of the expiration of the Unlinked Temporary Exemptions, with respect to the commenter's three remaining requests.

The Commission is extending, for a further nine months, the Unlinked Temporary Exemptions that relate to three requests for permanent exemptions for security-based swaps from limitations on hypothecation of securities carried for the account of a customer in Section 8 of the Exchange Act and in Exchange Act Rules 8c–1 and 15c2–1, from broker-dealer disclosure requirements relating to extensions of credit in Exchange Act Rules 10b–16 and 15c2–5, and from certain limitations on an OTC derivatives dealer's activities in Exchange Act Rule 15a–1. This additional time extends the transition period for the Exchange Act provisions and rules relevant to these three requests to allow time to further consider the requests taking into account the finalized regulatory regime for security-based swap dealers and major security-based swap participants, as well as the compliance date for registration of those entities.[32] The Commission believes that an additional nine months will provide sufficient time for this further consideration.

The Commission is not extending any other of the Unlinked Temporary Exemptions.[33] The Commission continues to believe that market participants will have had adequate time to consider the impact of the expiration of the remainder of the Unlinked Temporary Exemptions when they expire on February 5, 2020.

III. Commission Findings

Accordingly, pursuant to its authority under Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to extend for a period of nine months, until November 5, 2020, the Unlinked Temporary Exemptions from Section 8 of the Exchange Act and from Exchange Act Rules 8c–1, 15c2–1, 10b–16, 15c2–5, and 15a–1, in connection with the revision of the Exchange Act definition of ''security'' to encompass security-based swaps, in each case contained in the 2011 Exchange Act Exemptive Order and extended in the January 2019 Extension Order. This extension will allow time to further consider the requests taking into account the finalized regulatory regime for security-based swap dealers and major security-based swap participants, as well as the

[23] *See* January 2019 Extension Order, 84 FR at 867.

In response to the commenter's request, the Commission noted that the Unlinked Temporary Exemptions did not include an exemption from the definition of ''government securities'' in Section 3(a)(42) of the Exchange Act and noted that the Exchange Act does not permit the Commission to provide such relief. The Commission further noted that Section 31 fees do not currently apply to security-based swaps but that it may revisit the appropriateness of exempting security-based swaps from Section 31 fees at the time such fees begin to apply. *See* January 2019 Extension Order, 84 FR at 866 & n.40.

[24] *See* January 2019 Extension Order, 84 FR at 866.

[25] *See* supplemental letter from Kyle Brandon, Managing Director, SIFMA, dated Jan. 8, 2020 (''SIFMA January 2020 Letter'') (requesting permanent exemptive relief for security based-swaps from Section 8 of the Exchange Act and Exchange Act Rules 8c–1, 10b–16, 15a–1, 15c2–1 and 15c2–5 and withdrawing previous requests to make permanent certain other aspects of the Unlinked Temporary Exemptions, including those relating to Sections 15(b)(7), 17(f)(2), and 31 of the Exchange Act and Exchange Act Rules 10A–3, 10C–1 15b7–1, 15b9–1, and 17f–2).

[26] *See* SIFMA January 2020 Letter at 3–4); SIFMA December 2018 Letter at 5; Exchange Act Section 8, 15 U.S.C. 78h; Exchange Act Rule 8c–1, 17 CFR 240.8c–1; Exchange Act Rule 15c2–1, 17 CFR 240.15c2–1. Section 8 of the Exchange Act and Exchange Act Rules 8c–1 and 15c2–1 limit a broker-dealer's ability to hypothecate securities carried for the account of a customer.

[27] *See* SIFMA January 2020 Letter at 4; SIFMA December 2018 Letter at 5–6; Exchange Act Rule 10b–16, 17 CFR 240.10b–16; Exchange Act Rule 15c2–5, 17 CFR 240.15c2–5. Exchange Act Rules 10b–16 and 15c2–5 govern the disclosures that a broker-dealer must provide to customers to whom they extend credit.

[28] *See* SIFMA January 2020 Letter at 4–5 (requesting relief to permit OTC derivatives dealers to transact in centrally cleared or listed security-based swaps); SIFMA December 2018 Letter at 6–7; Exchange Act Rule 15a–1, 17 CFR 240.15a–1. Exchange Act Rule 15a–1 limits an OTC derivatives dealer's ability to engage in dealer activities in listed instruments and in fungible instruments that are standardized as to their material economic terms.

[29] *See* SIFMA January 2020 Letter at 2–3.

[30] *See* SIFMA January 2020 Letter at 5.

[31] *See, e.g.,* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015); Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14437 (Mar. 19, 2015); Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48963 (Aug. 14, 2015); Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53545 (Aug. 12, 2016); Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Person To Effect or Be Involved in Effecting Security-Based Swaps, Exchange Act Release No. 84858 (Dec. 19, 2018), 84 FR 4906 (Feb. 19, 2019); Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872 (Aug. 22, 2019); Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019); Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 87780 (Dec. 18, 2019).

[32] *See* note 3, *supra.*

[33] As always, the Commission may, however, consider tailored relief in the future under particular facts and circumstances.

compliance date for the registration of those entities.

The remainder of the Unlinked Temporary Exemptions will expire on February 5, 2020, as provided in the January 2019 Extension Order.

* * * * *

IV. Conclusion

It is hereby ordered, pursuant to Section 36 of the Exchange Act, that the Unlinked Temporary Exemptions from Section 8 of the Exchange Act and from Exchange Act Rules 8c–1, 15c2–1, 10b–16, 15c2–5 and 15a–1 in connection with the revision of the Exchange Act definition of ''security'' to encompass security-based swaps, in each case contained in the 2011 Exchange Act Exemptive Order and extended in the January 2019 Extension Order, are extended until November 5, 2020.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–00568 Filed 1–15–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87942; File No. SR–EMERALD–2020–02]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education

January 10, 2020.

Pursuant Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2020, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend, reorganize and enhance its membership, registration and qualification rules and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reorganize and enhance its membership, registration and qualification rules, make conforming changes to certain other rules, and organize the proposed changes into a new chapter of rules in the MIAX Emerald Rulebook. All of the proposed rules and changes to existing Exchange rules are based on existing rules of other options exchanges.[3] The proposed rules are intended to amend, reorganize and enhance the Exchange's membership, registration and qualification requirements rules to align with recent similar changes by the Exchange's affiliate, MIAX,[4] as well as the Nasdaq Stock Market and FINRA. MIAX Emerald proposes to adopt new Chapter XIX to the Exchange's rules.

Overview

The Exchange adopted registration requirements to ensure that associated persons[5] attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the Exchange's current rules require that persons engaged in a Member's[6] securities business who are to function as representatives[7] or principals[8] register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations[9] and exempt specified associated persons from the registration requirements.[10] They also prescribe ongoing continuing education requirements for registered persons.[11] The Exchange proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

In 2017, the Commission approved a Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Miami International Securities Exchange, LLC (''MIAX'') Rules, Chapter XIX, Registration, Qualification and Continuing Education; The Nasdaq Stock Market LLC (''Nasdaq Stock Market'') Rules, General 9, Regulation; Financial Industry Regulatory Authority, Inc. (''FINRA'') Rules, Rule 1000, Member Application and Associated Person Registration.

[4] *See* Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education) (SR–MIAX–2019–50).

[5] The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. *See* Exchange Rule 100. In accordance with other proposed changes in this filing, and as further described below, the Exchange proposes to amend the terms ''associated person'' or ''person associated with a Member.''

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] A ''representative'' is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. *See* proposed Exchange Rule 1901.

[8] A ''principal'' is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). A ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. *See* proposed Exchange Rule 1901.

[9] *See* proposed Exchange Rule 1901, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

[10] *See* proposed Exchange Rule 1902, Associated Persons Exempt from Registration.

[11] *See* proposed Exchange Rule 1903, Continuing Education Requirements.

change consolidating and adopting prior National Association of Securities Dealers, Inc. (''NASD'') rules and rules incorporated from the New York Stock Exchange (''NYSE'') relating to qualification and registration requirements into the Consolidated FINRA Rulebook,[12] restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a Member, and amending certain continuing education (''CE'') requirements (collectively, the ''FINRA Rule Changes'').[13] On December 20, 2019, the Commission noticed a proposal by the Exchange's affiliate, MIAX, to amend, reorganize and enhance MIAX's own membership, registration and qualification requirements rules in response to the FINRA Rule Changes.[14]

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in response to the changes by the Exchange's affiliate, MIAX, as well as the FINRA Rule Changes. In addition, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA rule change.[15]

As part of the Exchange's proposed rule changes, current Exchange Rule 203, Qualification and Registration of Members and Associated Persons, is proposed to be deleted. This current Exchange rule provision is incorporated into the new proposed Chapter XIX Exchange rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions, Exchange Rule 601, Registered Option Traders, Exchange Rule 1000, Disciplinary Jurisdiction, and Exchange Rule 1014, Imposition of Fines for Minor Rule Violations. These proposed changes correspond to the similar changes made by the Exchange's affiliate, MIAX.

In place of the deleted rule, and parts of the amended rules, the Exchange proposes to adopt new Chapter XIX, Registration, Qualification and Continuing Education, in the Exchange's Rulebook, together with conforming changes to certain existing Exchange rules. In the new Chapter XIX series of rules, the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable, existing FINRA registration requirement.[16]

The Exchange notes that the structure of this rule filing, as well as newly proposed Chapter XIX series of rules, is based on a recent rule filing by the Exchange's affiliate, MIAX, as well as the Nasdaq Stock Market.[17] The similar Nasdaq Stock Market filing also amended, reorganized and enhanced membership, registration and qualification rules for the Nasdaq Stock Market, and was based on the FINRA Rule Changes.[18] The proposed new Chapter XIX series of rules is also being proposed for adoption by MIAX Emerald's affiliate exchange, MIAX PEARL, LLC as new MIAX PEARL Chapter XXXI, in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of the affiliated exchanges among MIAX, MIAX PEARL and MIAX Emerald. The references throughout this filing to Exchange Rules 301, 1301, 1302, 1306, 1307, 1309, 1310 and 1319 will be construed to refer to the corresponding MIAX Rules for those same rule numbers.

New Proposed Rules and Proposed Changes to Current Exchange Rules

A. Registration Requirements (Proposed Exchange Rule 1900)

Exchange Rule 203(a) currently requires individuals and associated persons engaged, or to be engaged, in the securities business of a Member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.[19]

Proposed Exchange Rule 1900 provides that each person engaged in the securities business of a Member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Exchange Rule 1901, unless exempt from registration pursuant to proposed Exchange Rule 1902.[20] Proposed Exchange Rule 1900

[12] The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the NYSE (the ''Incorporated NYSE rules''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

[13] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements). *See also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

[14] *See supra* note 4.

[15] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities). In that rule change, FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[16] *See id.*

[17] *See* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules). *See also supra* note 4.

[18] *See id.*

[19] In general the 1900 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange. However, the Exchange also proposes to adopt Exchange Rule 1900, Interpretation and Policy. 12, based upon a current Nasdaq Stock Market rule. *See* Nasdaq Stock Market, General 9, Section 1, Rule 1.1210, Supplementary Material .12; *see also* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078). These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the Member's association with a person registered with the Exchange. The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .12, in order to have uniform processes and requirements in this area across the Exchange.

[20] Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in

Continued

also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

B. Minimum Number of Registered Principals (Proposed Exchange Rule 1900, Interpretation and Policy .01)

Exchange Rule 203, Interpretation and Policy .07, requires Members to register with the Exchange in a heightened capacity each individual acting in any of the following capacities: (a) Officer; (b) partner; (c) director; (d) supervisor of proprietary trading, market making or brokerage activities; and/or (e) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of these capacities (the ''two-principal requirement''). The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.[21]

The Exchange proposes to delete these requirements and in their place adopt new Exchange Rule 1900, Interpretation and Policy .01. The proposed rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Exchange Rule 1900, Interpretation and Policy .01, would require each Member, except a Member with only one associated person, to have at least two officers or partners who are registered as General Securities Principals, provided that a Member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the Member's activities.[22] For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, proposed Exchange Rule 1900, Interpretation and Policy .01, would provide that any Member with only one associated person is excluded from the two principal requirement. Proposed Exchange Rule 1900, Interpretation and Policy .01, would provide that existing Members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 203, Interpretation and Policy .07. Finally, the Exchange proposes to retain the existing provision in Exchange Rule 203 permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.[23]

C. Permissive Registrations (Proposed Exchange Rule 1900, Interpretation and Policy .02)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid the examination requirement. Current Exchange Rule 203(a) further prohibits a Member from making an application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

The Exchange proposes to replace these provisions with proposed Exchange Rule 1900, Interpretation and Policy .02. The Exchange also proposes to expand the scope of permissive registrations and to clarify a Member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Exchange Rule 1900, Interpretation and Policy .02, would allow any associated person to apply for or maintain any registration permitted by the Member. For instance, an associated person of a Member working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the Member. As another example, an associated person of a Member who is registered, and functioning solely as a General Securities Representative, would be able to obtain and maintain a General Securities Principal registration with the Member. Further, proposed Exchange Rule 1900, Interpretation and Policy .02, would allow an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a Member to obtain and maintain any registration permitted by the Member.

The Exchange proposes to permit the registration of such individuals for several reasons. First, a Member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow Members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a Member to obtain permissive registrations, but not others who equally are engaged in the Member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange

proposed Exchange Rules 1900, Interpretations and Policies .03 and .10 of Exchange Rule 1900, Exchange Rules 1901 and 1903, and also by omitting as unnecessary from proposed Exchange Rule 1901, a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

[21] Currently, Exchange Rule 203, Interpretation and Policy .08, describes when a Member is considered to be conducting only proprietary trading of the Member. Because the Exchange now proposes to delete Exchange Rule 203 in its entirety, Interpretation and Policy .08 of that rule would be reworded and relocated to Exchange Rule 100, Definitions, as a defined term.

[22] The principal registration categories are described in greater detail below.

[23] The Exchange does not propose to adopt provisions comparable to FINRA Rule 1210.01, which requires that all FINRA members have a Principal Financial Officer and a Principal Operations Officer, because the Exchange believes that its proposed Exchange Rule 1901(b)(3), Financial and Operations Principal, is sufficient. As described herein, proposed Exchange Rule 1901(b)(3), requires Member firms operating pursuant to certain provisions of the Commission's rules to designate at least one Financial and Operations Principal. Further, the Exchange does not propose to adopt FINRA Rule 1210.01, which requires that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not propose to recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in proposed Exchange Rule 1901(b)(7), and its inclusion is therefore unnecessary in proposed Exchange Rule 1900.

rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, Members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.[24] With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's direct supervisor is not required to be a registered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[25]

D. Qualification Examinations and Waivers of Examinations (Proposed Exchange Rule 1900, Interpretation and Policy .03)

Current Exchange Rule 203(a) provides that before a registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination (''SIE''), pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange proposes to replace this rule language with new Exchange Rule 1900, Interpretation and Policy .03, Qualification Examinations and Waivers of Examinations.

As part of the FINRA Rule Changes, FINRA adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the SIE) and a specialized knowledge examination appropriate to the representative's job functions at the firm with which he or she is associating.[26] Therefore, proposed Exchange Rule 1900, Interpretation and Policy .03, provides that before the registration of a person as a representative can become effective under proposed Exchange Rule 1900, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Exchange Rule 1901(c). Proposed Exchange Rule 1900, Interpretation and Policy .03, also provides that before the registration of a person as a principal can become effective under proposed Exchange Rule 1900, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 1901(b).

Further, proposed Exchange Rule 1900, Interpretation and Policy .03, provides that if the job functions of a registered representative change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.[27] Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities permitted under the existing representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, could do so by taking only the appropriate specialized knowledge examination.[28] However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative

[24] FINRA Rule 1210.02 specifically cites FINRA's supervisory system rule, FINRA Rule 3110, by number. Proposed Exchange Rule 1900, Interpretation and Policy .02, refers generally to the Exchange's supervision rules rather than identifying them by number.

[25] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual. *See* proposed Exchange Rule 1900, Interpretation and Policy .02.

[26] *See supra* note 13.

[27] FINRA stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Exchange Rule 1900, Interpretation and Policy .03, provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1900, Interpretation and Policy .03, also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Exchange Rule 1900, Interpretation and Policy .03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

[28] Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.[29]

In addition, individuals who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, under current Exchange Rule 203, Interpretation and Policy .05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange proposes to replace Exchange Rule 203, Interpretation and Policy .05, with proposed Exchange Rule 1900, Interpretation and Policy .03, with changes that track FINRA Rule 1210.03. The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative-level or principal-level registration category. Moreover, proposed Exchange Rule 1900, Interpretation and Policy .03, states that the Exchange will consider waivers of the SIE alone or the SIE and the representative-level and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Exchange Rule 1900, Interpretation and Policy .04)

The Exchange proposes to adopt new Exchange Rule 1900, Interpretation and Policy .04, which provides that subject to the requirements of proposed Exchange Rule 1901, Interpretation and Policy .03, a Member may designate any person currently registered, or who becomes registered, with the Member as a representative to function as a principal for a period of 120 calendar days prior to passing an appropriate principal qualification examination, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all prerequisite registration, fee and examination requirements prior to designation as principal. These requirements apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[30] Similarly, the proposed rule would permit a Member to designate any person currently registered, or who becomes registered, with the Member as a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under proposed Rule 1901.[31] This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to Members in meeting their principal requirements on a temporary basis.

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Exchange Rule 1900, Interpretation and Policy .05)

Before taking an examination, FINRA currently requires each candidate to agree to the SIE Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. The Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualification examination, the FINRA Sanction Guidelines recommend barring the individual.[32]

Effective October 1, 2018, FINRA codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own proposed Exchange Rule 1900, Interpretation and Policy .05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 301.[33] Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Exchange Rule 1900, Interpretation and Policy .05, also states that the Exchange considers all of the qualification examinations' content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would

[29] As discussed below, the Exchange proposes a four-year expiration period for the SIE.

[30] In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal.

[31] Proposed Exchange Rule 1900, Interpretation and Policy .04, omits the reference in FINRA Rule 1210.04 to Foreign Associates, which is a registration category not recognized by the Exchange, but otherwise tracks the language of FINRA Rule 1210.04.

[32] *See* FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at *https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf*.

[33] Exchange Rule 301, Just and Equitable Principles of Trade, prohibits Members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members have the same duties and obligations as Members under Exchange Rule 301.

compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations shall be prohibited and shall be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Exchange Rule 1900, Interpretation and Policy .05, would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.[34]

G. Waiting Periods for Retaking a Failed Examination (Proposed Exchange Rule 1900, Interpretation and Policy .06)

The Exchange proposes to adopt new Exchange Rule 1900, Interpretation and Policy .06, which provides that any person who fails to pass a qualification examination prescribed by the Exchange may retake that examination again after a period of 30 calendar days from the date of the person's last attempt to pass that examination.[35] Proposed Exchange Rule 1900, Interpretation and Policy .06, further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days has elapsed from the date of the person's last attempt to pass that examination. These waiting periods would apply to the SIE and the representative and principal examinations.[36]

H. Continuing Education (''CE'') Requirements (Proposed Exchange Rule 1900, Interpretation and Policy .07)

The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, which CE requirements the Exchange proposes to reorganize, renumber and adopt as proposed Exchange Rule 1903. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Exchange Rule 1903, as discussed below.[37] Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements. Consistent with current practice, proposed Exchange Rule 1900, Interpretation and Policy .07, would also provide that if a person registered with a Member has a CE deficiency with respect to that registration, such person shall not be permitted to be registered in another registration category with the Exchange under proposed Exchange Rule 1901 with that Member or to be registered in any registration category with the Exchange under proposed Exchange Rule 1901 with another Member, until the person has satisfied the deficiency.

I. Lapse of Registration and Expiration of SIE (Proposed Exchange Rule 1900, Interpretation and Policy .08)

Current Exchange Rule 203(h) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. Any person who last passed the SIE or who was last registered as a Representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a Representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange proposes to delete Exchange Rule 203(h), and replace it with proposed Exchange Rule 1900, Interpretation and Policy .08, Lapse of Registration and Expiration of SIE.

Proposed Exchange Rule 1900, Interpretation and Policy .08, contains language comparable to that of Exchange Rule 203(h) but also clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration. Proposed Exchange Rule 1900, Interpretation and Policy .08, also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange proposes that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative-level and principal-level registrations. The representative-level and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Exchange Rule 1900, Interpretation and Policy .09)

The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .09, to provide a process whereby individuals working for a financial services industry affiliate of a Member[38]

[34] The Exchange does not propose to adopt portions of FINRA Rule 1210.05, which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

[35] Proposed Exchange Rule 1900, Interpretation and Policy .06, has no counterpart in existing Exchange rules.

[36] FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange does not propose to include this language in proposed Exchange Rule 1900, Interpretation and Policy .06, as the Exchange will not apply the proposed 1900 Series of rules in any event to individuals who are not associated persons of Members.

[37] The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, in connection with the adoption of proposed Exchange Rule 1900, Interpretation and Policy .07.

[38] Proposed Exchange Rule 1900, Interpretation and Policy .09, defines a ''financial services industry affiliate of a Member'' as a legal entity that controls, is controlled by or is under common control with a Member and is regulated by the Commission, Commodity Futures Trading Commission (''CFTC''), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

would be able to terminate their registrations with the Member and be granted a waiver of their requalification requirements upon re-registering with a Member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.[39] The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they return to the firm.[40]

Under the waiver process in proposed Exchange Rule 1900, Interpretation and Policy .09, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the Member with which the individual is registered would notify the Exchange of the FSA designation. The Member would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a Member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that Member.[41] An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation [42] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a Member other than the Member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one Member may request a waiver for the individual during the seven-year period.[43]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a Member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange also proposes to make corresponding changes in proposed Exchange Rule 1903.

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,[44] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the Member that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a Member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a Member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a Member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a Member so long as the individual is continuously working for an affiliate. Further, a Member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[45] An individual who has been designated as an FSA-eligible person by a Member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a Member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Exchange Rule 1900, Interpretation and Policy .10)

The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .10, Status of Persons Serving in

[39] There is no counterpart to proposed Exchange Rule 1900, Interpretation and Policy .09, in the Exchange's existing rules. FINRA Rule 1210.09 was adopted as a new waiver process for FINRA registration, as part of the FINRA Rule Changes. *See supra* note 13.

[40] *See supra* note 13.

[41] For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

[42] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[43] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

[44] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

[45] For example, if a Member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the Member for three years and re-registers the individual, the Member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the Member for another three years, the Member could submit a second waiver request and re-register the individual upon returning to the Member.

the Armed Forces of the United States.[46] Proposed Exchange Rule 1900, Interpretation and Policy .10(a), would permit a registered person of a Member who volunteers for or is called into active duty in the Armed Forces of the United States to be placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such Member upon his or her return to active employment with the Member. The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing Member may allow the registered person to enter into an arrangement with another registered person of the Member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Exchange Rule 1903 during the pendency of such inactive status.[47]

Pursuant to proposed Exchange Rule 1900, Interpretation and Policy .10(b), a Member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to the Exchange, on inactive status while the Member remains on active military duty, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor Member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

Pursuant to proposed Exchange Rule 1900, Interpretation and Policy .10(c), if a person who was formerly registered with a Member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceased to be registered with a Member, the Exchange shall defer the lapse of registration requirements set forth in proposed Exchange Rule 1900, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE). The Exchange would defer the lapse of registration requirements and the SIE commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a Member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 1900, Interpretation and Policy .08, reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

Further, under proposed Exchange Rule 1900, Interpretation and Policy .10(c), if a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a Member, the Exchange would defer the lapse of registration requirements set forth in proposed Exchange Rule 1900, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE) during the pendency of his or her active service in the Armed Forces of the United States. The Exchange would defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a Member within 90 days following completion of active service, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE would consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 1900, Interpretation and Policy .08.[48]

L. Impermissible Registrations (Proposed Exchange Rule 1900, Interpretation and Policy .11)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid an examination requirement. This rule also prohibits a Member from applying for the registration of a person as representative or principal where the Member does not intend to employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Exchange Rule 203(a).

In light of proposed Exchange Rule 1900, Interpretation and Policy .02, Permissive Registrations, discussed above, the Exchange proposes to delete these provisions of current Exchange Rule 203(a) and instead adopt proposed Exchange Rule 1900, Interpretation and Policy .11, prohibiting a Member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Exchange Rule 1900.[49]

[46] There is no counterpart to proposed Exchange Rule 1900, Interpretation and Policy .10, in the Exchange's current rules.

[47] The relief provided in proposed Exchange Rule 1900, Interpretation and Policy .10(a), would be available to a registered person during the period that such person remains registered with the Member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another Member upon completion of his or her active duty. The relief would apply only to a person registered with a Member and only while the person remains on active military duty. Further, the Member with which such person is registered would be required to promptly notify the Exchange of such person's return to active employment with the Member.

[48] *See* Nasdaq Stock Market, General 9, Regulation, Section 1 Registration, Qualification and Continuing Education, Rule 1.1210.10(c).

[49] As discussed above, the Exchange also proposes to adopt Exchange Rule 1900,

Continued

M. Registration Categories (Proposed Exchange Rule 1901)

The Exchange proposes to adopt new and revised registration category rules and related definitions in proposed Exchange Rule 1901, Registration Categories.[50]

1. Definitions (Proposed Exchange Rule 1901(a))[51]

The Exchanges proposes to adopt Exchange Rule 1901(a) to define certain registration categories and terms used throughout the Exchange's new proposed 1900s Series of rules. First, the Exchange proposes to adopt a definition for the term ''actively engaged in the management of the Member's securities business,'' which is used to describe the functions of a ''principal,'' as more fully discussed below.[52] The Exchange proposes that the term ''actively engaged in the management of the Member's securities business'' means the management of, and the implementation of corporate policies related to, such business, as well as managerial decision-making authority with respect to the Member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the Member's executive, management or operations committees.

Next, the Exchange proposes to adopt a definition for the term ''Financial and Operations Principal,'' which the Exchange proposes to mean a person associated with a Member whose duties include (i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (ii) final preparation of such reports; (iii) supervision of individuals who assist in the preparation of such reports; (iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the Member's books and records from which such reports are derived; (v) supervision and/or performance of the Member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the Member's back office operations; and (vii) any other matter involving the financial and operational management of the Member.

Next, the Exchange proposes to adopt a definition for the term ''principal'' and include it in newly proposed Exchange Rule 1901(a). The Exchange proposes to adopt a definition of ''principal,'' which would mean any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). The term ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules.

Finally, the Exchange proposes to adopt a definition for the term ''representative'' in proposed Exchange Rule 1901(a). Currently, the Exchange's rules do not define the term ''representative.'' Proposed Exchange Rule 1901(a) would define the term ''representative'' as any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions.

2. Principal Registration Categories (Proposed Exchange Rule 1901(b))

i. General Securities Principal (Proposed Rule 1901(b)(1))

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange proposes to adopt Exchange Rule 1901(b)(1), which would establish an obligation to register as a General Securities Principal, subject to certain exceptions.[53] Proposed Exchange Rule 1901(b)(1) states that each principal is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of those categories.[54] Proposed Exchange Rule 1901(b)(1)(i)(C) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if the principal is engaged in options sales activities, he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.[55]

Proposed Exchange Rule 1901(b)(1)(ii) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

The Exchange does not propose to adopt FINRA Rule 1220(a)(2)(B), which permits an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.[56]

Interpretation and Policy .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1900, Interpretation and Policy .12, is based upon portions of current Exchange Rules 203 and 1301. *See also supra* note 19.

[50] For ease of reference, the Exchange proposes to adopt as Exchange Rule 1901, Interpretation and Policy .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

[51] The Exchange notes that proposed Exchange Rule 1901 differs from the Nasdaq Stock Market rule filing in that the Exchange has consolidated the definitions for various registration categories into one section, proposed Exchange Rule 1901(a), whereas the Nasdaq Stock Market filing includes the registration category definition in each individual section pertaining to that specific registration category type. *See supra* note 17.

[52] *See also supra* note 8.

[53] There is no counterpart to proposed Exchange Rule 1901(b)(1) in the Exchange's current rules.

[54] The Exchange proposes to recognize the General Securities Principal registration category for the first time in this proposed rule change.

[55] *See* Nasdaq Stock Market, General 9, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1220(a)(2)(A)(i)–(iv). Proposed Exchange Rule 1901(b)(1) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA Rule 1220(a)(2)(A). The Exchange therefore proposes to reserve Exchange Rules 1901(b)(1)(i)(B) and (D).

[56] Proposed Exchange Rule 1901(b)(1) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1901(b)(1)(i)(A) extends that provision's

ii. Compliance Official (Proposed Exchange Rule 1901(b)(2))

Currently, Exchange Rule 203(f) requires each Member and Member organization that is a registered broker-dealer to designate a Chief Compliance Officer on Schedule A of Form BD and requires individuals designated as a Chief Compliance Officer to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.[57]

The Exchange proposes to delete Exchange Rule 203(f) and adopt Exchange Rule 1901(b)(2) in its place. Proposed Exchange Rule 1901(b)(2) would provide that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination. However, pursuant to Exchange Rule 1901(b)(2)(iii), an individual designated as a Chief Compliance Officer on Schedule A of Form BD of a Member that is engaged in limited securities business may be registered in a principal category under proposed Exchange Rule 1901(b) that corresponds to the limited scope of the Member's business.

Additionally, proposed Exchange Rule 1901(b)(2)(iv) would provide that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a Member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (c)(3) as a Securities Trader, and to pass the Compliance Official qualification exam.[58]

iii. Financial and Operations Principal (Proposed Exchange Rule 1901(b)(3))

Current Exchange Rule 203(e) provides that each Member subject to Rule 15c3–1 of the Act must designate a Financial/Operations Principal. It specifies that the duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. It requires Financial/Operations Principal to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). It further provides that each Financial/Operations Principal designated by a Member shall be registered in that capacity with the Exchange as prescribed by the Exchange, and that a Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

The Exchange proposes to delete Exchange Rule 203(e) and adopt in its place Exchange Rule 1901(b)(3). Under the new rule, every Member of the Exchange that is operating pursuant to the provisions of Rules 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8) of the Commission, shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in paragraph (a) of proposed Exchange Rule 1901. In addition, each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

Proposed Exchange Rule 1901(b)(3)(ii) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, proposed Exchange Rule 1901(b)(3)(iii) would prohibit a person registered solely as a Financial and Operations Principal from functioning in a principal capacity with responsibility over any area of business activity not described in paragraph (a) of the rule for a Financial and Operations Principal.[59]

iv. Investment Banking Principal (Proposed Exchange Rule 1901(b)(4))

The Exchange does not recognize the Investment Banking Principal registration category and proposes to reserve Exchange Rule 1901(b)(4), retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Principal (Proposed Exchange Rule 1901(b)(5))

The Exchange does not recognize the Research Principal registration category and proposes to reserve Exchange Rule 1901(b)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Securities Trader Principal (Proposed Exchange Rule 1901(b)(6))

Current Exchange Rule 203(c) provides that Members that are individuals and associated persons of Members included within the definition of Option Principal in Exchange Rule 100 and who will have supervisory responsibility over the securities trading activities described in Exchange Rule 203(d) shall become qualified and

exception to the General Securities Principal registration requirement to certain principals whose activities are ''limited to'' (rather than ''include'') the functions of a more limited principal. The Exchange believes that activities ''limited to'' expresses the intent of that exception more accurately than activities that ''include.''

[57] Exchange Rule 203(f) further provides that a person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to: (1) Any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; (3) the imposition of a fine of $5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or (4) the imposition of a fine of $5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

[58] Proposed Exchange Rule 1901(b)(2) differs from FINRA Rule 1220(a)(3), Compliance Officer, as the Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Exchange Rule 1901(b)(2), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the Member's business.

[59] FINRA Rule 1220(a)(4) differs from proposed Exchange Rule 1901(b)(3) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Exchange Rule 1901(b)(3) contains a requirement, which the FINRA rule does not, that each person associated with a Member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange does not propose to adopt a Principal Financial Officer or Principal Operations Officer requirement similar to FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient.

registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person shall become qualified and registered as a Securities Trader under Rule 1302(e) and pass the SIE and General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Exchange Rule 203(d), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Current Exchange Rule 203(c)(2) provides that a person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Exchange Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Exchange Rule 1302(e) and become registered as a Securities Trader Principal.

The Exchange proposes to delete Exchange Rule 203(c) and adopt in its place Exchange Rule 1901(b)(6), Securities Trader Principal. Proposed Exchange Rule 1901(b)(6) would require that a principal responsible for supervising the securities trading activities specified in proposed Exchange Rule 1901(c)(3)[60] register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

vii. Registered Options Principal (Proposed Exchange Rule 1901(b)(7))

The Exchange proposes to adopt Exchange Rule 1901(b)(7), Registered Options Principal, which would require that each Member that is engaged in transactions in options with the public have at least one Registered Options Principal.[61] Currently, Exchange Rule 100, Definitions, provides a definition for an ''Options Principal.'' In accordance with the proposal to adopt Exchange Rule 1901(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' in Exchange Rule 100, Definitions. As discussed below, the Exchange proposes to adopt a corresponding definition for a ''Registered Options Principal'' in Exchange Rule 100, which would refer to proposed Exchange Rule 1901(b)(7). In addition, each principal as defined in proposed Exchange Rule 1901(a) who is responsible for supervising a Member's options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, with one exception, as follows. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (b)(9) of this Rule in lieu of registering as a Registered Options Principal.[62]

Pursuant to proposed Exchange Rule 1901(b)(7)(ii), subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, each person registered with the Exchange as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 would, prior to or concurrent with such registration, be required to become registered pursuant to proposed Exchange Rule 1901(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.[63]

viii. Government Securities Principal (Proposed Exchange Rule 1901(b)(8))

The Exchange does not recognize the Government Securities Principal registration category and proposes to reserve Exchange Rule 1901(b)(8), retaining the caption solely to facilitate comparison with FINRA's rules.

ix. General Securities Sales Supervisor (Proposed Exchange Rules 1901(b)(9) and Interpretation and Policy .04)

The Exchange proposes to adopt Exchange Rule 1901(b)(9), General Securities Sales Supervisor, as well as Interpretation and Policy .04 to Exchange Rule 1901, which explains the purpose of the General Securities Sales Supervisor registration category.[64] Proposed Exchange Rule 1901(b)(9) provides that each principal, as defined in proposed paragraph (a) of this Rule, may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the securities business of a Member are limited to the securities sales activities of the Member, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the Member required to be maintained in branch offices by Exchange Act record-keeping rules. Further, a person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: (i) Supervision of market making commitments; (ii) supervision of the custody of broker-dealer or customer

[60] Proposed Exchange Rule 1901(c)(3), discussed below, provides for representative-level registration in the ''Securities Trader'' category.

[61] Proposed Exchange Rule 1901(b)(7) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

[62] Current Exchange Rule 1301(a) provides that no Member shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to Exchange Rule 1308) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. Exchange Rule 1301(b) provides that individuals who are delegated responsibility pursuant to Exchange Rule 1308 for the acceptance of discretionary accounts, for approving exceptions to a Member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the SIE, the General Securities Representative qualification examination (Series 7) and the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of Exchange Rule 1301 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than conforming all references to ''Options Principal'' with ''Registered Options Principal,'' as more fully discussed herein. Exchange Rule 203(g), which merely serves as a cross-reference to Exchange Rules 1301 and 1302, is unnecessary and is therefore proposed to be deleted with the rest of Exchange Rule 203.

[63] Although the Exchange does not currently list security futures products, it also proposes to adopt Exchange Rule 1901, Interpretation and Policy .02, which provides that each person who is registered with the Exchange as a General Securities Representative, Registered Options Principal, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Exchange Rule 1903 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 1901, Interpretation and Policy .02, omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange also proposes to adopt Exchange Rule 1901, Interpretation and Policy .03, which requires notification to the Exchange in the event a Member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the Member's options business in that event.

[64] Proposed Exchange Rule 1901(b)(9) has no counterpart in the Exchange's current rules.

funds or securities for purposes of Exchange Act Rule 15c3–3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.[65]

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to proposed Exchange Rule 1901(c)(1) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.[66]

x. Investment Company and Variable Contracts Products Principal (Proposed Exchange Rule 1901(b)(10))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal category and is reserving proposed Exchange Rule 1901(b)(10), retaining the caption solely to facilitate comparison with FINRA's rules.

xi. Direct Participation Programs Principal (Proposed Exchange Rule 1901(b)(11))

The Exchange does not recognize the Direct Participation Programs Principal registration category and is reserving proposed Exchange Rule 1901(b)(11), retaining the caption solely to facilitate comparison with FINRA's rules.

xii. Private Securities Offerings Principal (Proposed Exchange Rule 1901(b)(12))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving proposed Exchange Rule 1901(b)(12), retaining the caption solely to facilitate comparison with FINRA's rules.

xiii. Supervisory Analyst (Proposed Exchange Rule 1901(b)(13))

The Exchange does not recognize the Supervisory Analyst registration category and is reserving proposed Exchange Rule 1901(b)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

3. Representative Registration Categories (Proposed Exchange Rule 1901(c))

i. General Securities Representative (Proposed Exchange Rule 1901(c)(1))

The Exchange proposes to adopt Exchange Rule 1901(c)(1), General Securities Representative. Proposed Exchange Rule 1901(c)(1)(i) would state that each representative as defined in proposed Exchange Rule 1901(a) is required to register with the Exchange as a General Securities Representative, subject to the exception that if a representative's activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Exchange Rule 1901(c)(1)(ii) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.[67]

In addition, the Exchange proposes to adopt Exchange Rule 1901, Interpretation and Policy .01, to provide certain individuals who are associated persons of firms and who hold specific foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. In particular, pursuant to proposed Exchange Rule 1901, Interpretation and Policy .01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. This proposed rule would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

ii. Operations Professional (Proposed Exchange Rule 1901(c)(2))

The Exchange does not recognize the Operations Professional registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(2), Operations Professional, and related Interpretation and Policy .05 to proposed Exchange Rule 1901, Scope of Operations Professional Requirement, retaining the caption solely to facilitate comparison with FINRA's rules.

iii. Securities Trader (Proposed Exchange Rule 1901(c)(3))

Pursuant to current Exchange Rule 203(d)(1) and (2), Members that are individuals and associated persons of Members must register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the Member.

The Exchange proposes to delete Exchange Rule 203(d), and replace it with proposed Exchange Rule 1901(c)(3).[68] Proposed Exchange Rule 1901(c)(3) would require each representative as defined in paragraph (a) of this Rule to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with a Member.

Additionally, proposed Exchange Rule 1901(c)(3)(i) would require each person associated with a Member who

[65] Proposed Exchange Rule 1901(b)(9), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of ''securities trading'' covered by the Exchange's new 1900 Series of rules.

[66] Unlike FINRA Rule 1220.04, proposed Exchange Rule 1901, Interpretation and Policy .04, refers to ''multiple exchanges'' rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

[67] Proposed Exchange Rule 1901(c)(1)(i) differs from FINRA Rule 1220(b)(2)(A) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

[68] Proposed Exchange Rule 1901(c)(3)(i) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is ''effected otherwise than on a securities exchange.'' Additionally, the FINRA rule does not specifically extend to options trading.

is: (i) Primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.[69]

For purposes of this proposed new registration requirement an ''algorithmic trading strategy'' would be an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.[70] The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, Members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A Member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a Member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Exchange Rule 1901(c)(3)(ii), each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, to pass the SIE and the Securities Trader qualification examination.

Further, the Exchange proposes to adopt Exchange Rule 1901(c)(3), which defines the requirements and qualifications for a Securities Trader, as well as its proposal to amend Exchange Rule 100 to insert definitions for ''proprietary trading'' and ''proprietary trading firm,'' as described below.

iv. Investment Banking Representative (Proposed Exchange Rule 1901(c)(4))

The Exchange does not recognize the Investment Banking Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(4), Investment Banking Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Analyst (Proposed Exchange Rule 1901(c)(5))

The Exchange does not recognize the Research Analyst registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(5), Research Analyst, retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Investment Company and Variable Products Representative (Proposed Exchange Rule 1901(c)(6))

The Exchange does not recognize the Investment Company and Variable Products Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(6), Investment Company and Variable Products Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

vii. Direct Participation Programs Representative (Proposed Exchange Rule 1901(c)(7))

The Exchange does not recognize the Direct Participation Programs Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(7), Direct Participation

[69] As noted above, this new registration requirement was added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule's coverage. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).

[70] *See supra* note 15.

Programs Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

viii. Private Securities Offerings Representative (Proposed Exchange Rule 1901(c)(8))

The Exchange does not recognize the Private Securities Offerings Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(8), Private Securities Offerings Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

4. Eliminated Registration Categories (Proposed Exchange Rule 1901, Interpretation and Policy .06)

Proposed Exchange Rule 1901, Interpretation and Policy .06, has no practical relevance to the Exchange, but is included because the Exchange proposes to adopt rules similar to FINRA's 1200 Series, on a near uniform basis. Accordingly, proposed Exchange Rule 1901, Interpretation and Policy .06, provides that, subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, individuals who are registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category.

5. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Exchange Rule 1901(b)(1)(ii) (relating to General Securities Principals) and proposed Exchange Rule 1901, Interpretation and Policy .06 (relating to the eliminated registration categories), the Exchange proposes to include grandfathering provisions in proposed Exchange Rule 1901(b)(7) (Registered Options Principal), Exchange Rule 1901(c)(1) (General Securities Representative), and Exchange Rule 1901(c)(3) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt From Registration (Proposed Exchange Rules 1902 and 1902, Interpretation and Policy .01)

Current Exchange Rule 203(b) currently provides that the following individual Members and individual associated persons of Members are not required to register:

(1) Individual associated persons whose functions are solely and exclusively clerical or ministerial;

(2) individual Members and individual associated persons who are not actively engaged in the securities business;

(3) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation; (4) individual associated persons whose functions are related solely and exclusively to:

(i) Transactions in commodities;

(ii) transactions in security futures; and/or

(iii) effecting transactions on the floor of another securities exchange and who are registered floor members with such exchange.

The Exchange proposes to delete Exchange Rule 203(b) and adopt provisions of Exchange Rule 203(b) in the newly proposed Exchange Rule 1902, subject to certain changes. Current Exchange Rule 203(b)(2) exempts from registration those individual Members and individual associated persons of Members who are not actively engaged in the securities business. Exchange Rule 203(b)(3) also exempts from registration those associated persons whose functions are related solely and exclusively to a Member's need for nominal corporate officers or for capital participation.[71] The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for individual Members and individual associated persons who are not ''actively engaged'' in a Member's securities business, associated persons whose functions are related only to a Member's need for nominal corporate officers or associated persons whose functions are related only to a Member's need for capital participation is consistent with this analytical framework.[72] The Exchange therefore proposes to delete these exemptions. Exchange Rule 203(b)(4)(iii) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Exchange Rule 1902 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.[73] Additionally, the Exchange proposes to adopt paragraph (c) of proposed Exchange Rule 1902, pursuant to which persons associated with a Member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.[74]

The Exchange proposes to adopt Exchange Rule 1902, Interpretation and Policy .01, to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons

[71] These exemptions generally apply to associated persons who are corporate officers of a Member in name only to meet specific corporate legal obligations or who only provide capital for a Member, but have no other role in a Member's business.

[72] The Exchange also proposes to delete Exchange Rule 203, Interpretation and Policy .06, which specifies circumstances in which the Exchange considers an individual Member or an individual associated person to be engaged in the securities business of a Member or Member organization. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

[73] Proposed Exchange Rule 1902 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Stock Market Rule 1.1230, which are not included in FINRA Rule 1230. *See* Nasdaq Stock Market, General 9, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1230.

[74] Individuals described by paragraph (c) of proposed Exchange Rule 1902 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA eliminated this registration category effective October 1, 2018, and the Exchange never recognized it.

who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to Continuing Education Requirements (Proposed Exchange Rule 1903)

Continuing education for registered persons, includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the Member. The Exchange proposes to adopt Exchange Rule 1903 to better organize the continuing education requirements.[75]

1. Regulatory Element

The Exchange proposes to adopt the term ''covered person'' in proposed Exchange Rule 1903(a). For purposes of the Regulatory Element, the Exchange proposes to define the term ''covered person'' in proposed Exchange Rule 1903(a)(5), as any person registered pursuant to proposed Exchange Rule 1900, including any person who is permissively registered pursuant to proposed Exchange Rule 1900, Interpretation and Policy .02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Exchange Rule 1900, Interpretation and Policy .09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term ''covered persons'' corresponds to the requirements of proposed Exchange Rule 1900, Interpretation and Policy .09. In addition, consistent with proposed Exchange Rule 1900, Interpretation and Policy .09, proposed Exchange Rule 1903(a)(1) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange proposes to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Exchange Rule 1903(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the Member with which the person is associated has a policy prohibiting such trail or residual commissions.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Exchange Rule 1903(b)(2)(ii), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Requirements for Uniform Rules (Proposed Exchange Rule 1904)

Current Exchange Rule 203, Interpretations and Polices .01–.03, state that each individual required to register shall electronically file a Uniform Application for Securities Industry Registration (''Form U4'') through the Central Registration Depository system (''Web CRD'') operated by FINRA and to electronically submit to Web CRD any required amendments to Form U4. Further, any Member or Member organization that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements, which include the filing of a Form U5.

The Exchange proposes to delete current Exchange Rule 203, Interpretations and Polices .01–.03, and to replace them with proposed Exchange Rule 1904, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and Form U5 electronic filing requirements into a single rule. The proposed rule provides that all forms required to be filed under the Exchange's registration rules including the Exchange Rule 1900 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under proposed Exchange Rule 1904(b), each Member would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he or she is filing this information on behalf of the Member and the Member's associated persons. Under proposed Exchange Rule 1904, Interpretation and Policy .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in proposed Exchange Rule 1904(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Pursuant to proposed Exchange Rule 1904(c)(1), every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the Member's recordkeeping requirements, it would be required to retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Exchange Act Rule 17a–4(e)(1) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Proposed Exchange Rule 1904(c)(2) and Interpretations and Policies .03 and .04 to proposed Exchange Rule 1904, provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

[75] Proposed Exchange Rule 1903 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

Proposed Exchange Rule 1904(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a Member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint information. It further provides that if a Member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under this proposed rule, the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 1901. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Proposed Exchange Rule 1904(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the Member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a–4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Exchange Rule 1904, Interpretation and Policy .02, a Member could enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the Member and the Member's associated persons. Notwithstanding the existence of such an agreement, the Member would remain responsible for complying with the requirements of the Rule.

Q. Exchange Rule 100, Definitions

The Exchange proposes to amend Exchange Rule 100, Definitions, to amend the term ''associated person'' or ''person associated with a Member.'' Currently, the term associated person or person associated with a Member means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member.

The Exchange proposes to amend the term associated person or person associated with a Member to insert, at the end of the definition, the phrase ''except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.'' With the proposed change, the definition for associated person or person associated with a Member would be as follows:

The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions to adopt definitions for the following terms: Person, proprietary trading, and proprietary trading firm. The Exchange proposes that the term ''person'' shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

The Exchange proposes that the term ''proprietary trading'' for the purpose of proposed Exchange Rule 1900, means trading done by a Member having the following characteristics: (i) The Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the Member are the trading member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

The Exchange proposes that the term ''proprietary trading firm'' for the purpose of proposed Exchange Rule 1900, means a Member organization or applicant with the following characteristics: (i) The applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

As described above, in connection with the Exchange's proposal to adopt Exchange Rule 1901(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' from Exchange Rule 100 in order to provide consistency and clarity within the rule text. In proposed Exchange Rule 1901(b)(7), the Exchange sets forth the requirements and qualifications for a ''Registered Options Principal,'' which incorporates, and adds to, the rule text for the Exchange's current definition for ''Options Principal.'' Accordingly, the Exchange proposes to delete the term ''Options Principal'' and replace all references in the rule text to ''Options Principal'' with the new proposed term ''Registered Options Principal.'' The Exchange also proposes to adopt a definition for a ''Registered Options Principal'' in Exchange Rule 100, that will provide a cross-reference to Exchange Rule 1901(b)(7).

R. Exchange Rule 601, Registered Options Traders

In accordance with the proposed change to delete Exchange Rule 203 in its entirety, revise and relocate the provisions of Exchange Rule 203 to the newly proposed 1900 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 601(b)(2). Currently, Exchange Rule 601(b)(2) has a cross-reference to Exchange Rule 203(a). The Exchange proposes to amend that cross-reference to proposed Exchange Rule 1900.

S. Exchange Rule 1000, Disciplinary Jurisdiction

The Exchange proposes to amend a cross-reference in Exchange Rule 1000(c). Currently, Exchange Rule 1000(c) has a cross-reference to Exchange Rule 1302. The Exchange proposes to amend that cross-reference to proposed Exchange Rule 1900, Interpretation and Policy .12.

T. Exchange Rule 1014, Imposition of Fines for Minor Rule Violations

The Exchange proposes to amend the cross-references in Exchange Rule

1014(d)(14) that are to current Exchanges Rules 1301, 1302 and 1303. The Exchange proposes to amend the cross-references in Exchange 1014(d)(14) that are to Exchange Rules 1301, 1302 and 1303 to the newly proposed Exchange Rule 1904, which incorporates that deleted rule text. Accordingly, the Exchange proposes to amend the cross-reference in Exchange Rule 1014(d)(14) to now be to proposed Exchange Rule 1904.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[76] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[77] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[78] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes will streamline, and bring consistency and uniformity to, the Exchange's registration rules. The Exchange believes that this will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule changes will expand the scope of permissive registrations, which, among other things, will allow Members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule changes will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a Member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule changes will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the Member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

The proposed rule changes, including additional definitions and changes to cross-references, make organizational changes to the Exchange's registration and qualification rules, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to ensure that all associated persons of Members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1900 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, as well as the Exchange's affiliate, MIAX, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Exchange, thereby promoting uniformity of regulation across markets. The proposed 1900 Series of rules should in fact remove administrative burdens that currently exist for Members seeking to register associated persons on the Exchange featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of Members will be treated similarly under the new 1900 Series of rules in terms of standards of training, experience and competence for persons associated with Exchange Members.

With respect in particular to registration of developers of algorithmic trading strategies, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding

[76] 15 U.S.C. 78f(b).

[77] 15 U.S.C. 78f(b)(5).

[78] *Id.*

technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the covered activities. It also excludes supervisors who are not responsible for the ''day-to-day'' supervision or direction of the covered activities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[79] and Rule 19b–4(f)(6) thereunder.[80]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[81] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[82] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. According to the Exchange, the proposal is part of a larger effort to create uniform rules relating to registration, qualification examinations and continuing education of associated persons of Members among the Exchange and its affiliates, MIAX and MIAX PEARL, LLC. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[83]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–EMERALD–2020–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2020–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2020–02, and should besubmitted on or before February 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

J. Matthew DeLesDernier,

Assistant Secretary.

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[79] 15 U.S.C. 78s(b)(3)(A).

[80] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[81] 17 CFR 240.19b–4(f)(6).

[82] 17 CFR 240.19b–4(f)(6)(iii).

[83] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission notes that the proposed rule change was initially filed on January 9, 2020 and subsequently withdrawn and refiled on January 10, 2020.

[84] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87935; File No. SR–BOX–2019–32]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network

January 10, 2020.

On October 31, 2019, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's fee schedule to establish certain connectivity fees and reclassify its high speed vendor feed connection as a port fee. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on November 19, 2019.[4] The Commission received one comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 87516 (November 13, 2019), 84 FR 63919.

letter on the proposal.[5] On December 23, 2019, the Exchange withdrew the proposed rule change (SR–BOX–2019–32).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87941; File No. SR–PEARL–2020–01]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XXXI Registration, Qualification and Continuing Education

January 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend, reorganize and enhance its membership, registration and qualification rules and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reorganize and enhance its membership, registration and qualification rules, make conforming changes to certain other rules, and organize the proposed changes into a new chapter of rules in the MIAX PEARL Rulebook. All of the proposed rules and changes to existing Exchange rules are based on existing rules of other options exchanges.[3] The proposed rules are intended to amend, reorganize and enhance the Exchange's membership, registration and qualification requirements rules to align with recent similar changes by the Exchange's affiliate, MIAX,[4] as well as the Nasdaq Stock Market and FINRA. MIAX PEARL proposes to adopt new Chapter XXXI[5] to the Exchange's rules.

Overview

The Exchange adopted registration requirements to ensure that associated persons[6] attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the Exchange's current rules require that persons engaged in a Member's[7] securities business who are to function as representatives[8] or principals[9] register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations[10] and exempt specified associated persons from the registration requirements.[11] They also prescribe ongoing continuing education requirements for registered persons.[12] The Exchange proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

In 2017, the Commission approved a Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change consolidating and adopting prior National Association of Securities Dealers, Inc. (''NASD'') rules and rules incorporated from the New York Stock Exchange (''NYSE'') relating to qualification and registration requirements into the Consolidated FINRA Rulebook,[13] restructuring the

[5] *See* Letter from Edward Devlin IV, dated November 24, 2019.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Miami International Securities Exchange, LLC (''MIAX'') Rules, Chapter XIX, Registration, Qualification and Continuing Education; The Nasdaq Stock Market LLC (''Nasdaq Stock Market'') Rules, General 9, Regulation; Financial Industry Regulatory Authority, Inc. (''FINRA'') Rules, Rule 1000, Member Application and Associated Person Registration.

[4] *See* Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education) (SR–MIAX–2019–50).

[5] The Exchange proposes to reserve Chapters XIX through XXX for anticipated future use.

[6] The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. *See* Exchange Rule 100. In accordance with other proposed changes in this filing, and as further described below, the Exchange proposes to amend the terms ''associated person'' or ''person associated with a Member.''

[7] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] A ''representative'' is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. *See* proposed Exchange Rule 3101.

[9] A ''principal'' is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). A ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. *See* proposed Exchange Rule 3101.

[10] *See* proposed Exchange Rule 3101, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

[11] *See* proposed Exchange Rule 3102, Associated Persons Exempt from Registration.

[12] *See* proposed Exchange Rule 3103, Continuing Education Requirements.

[13] The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules

FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a Member, and amending certain continuing education (''CE'') requirements (collectively, the ''FINRA Rule Changes'').[14] On December 20, 2019, the Commission noticed a proposal by the Exchange's affiliate, MIAX, to amend, reorganize and enhance MIAX's own membership, registration and qualification requirements rules in response to the FINRA Rule Changes.[15]

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in response to the changes by the Exchange's affiliate, MIAX, as well as the FINRA Rule Changes. In addition, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA rule change.[16]

As part of the Exchange's proposed rule changes, current Exchange Rule 203, Qualification and Registration of Members and Associated Persons, is proposed to be deleted. This current Exchange rule provision is relocated in amended form into the new proposed Chapter XXXI Exchange rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions, Exchange Rule 601, Registered Option Traders, Exchange Rule 1000, Disciplinary Jurisdiction, and Exchange Rule 1014, Imposition of Fines for Minor Rule Violations. These proposed changes correspond to the similar changes made by the Exchange's affiliate, MIAX.

In place of the deleted rule, and parts of the amended rules, the Exchange proposes to adopt new Chapter XXXI, Registration, Qualification and Continuing Education, in the Exchange's Rulebook, together with conforming changes to certain existing Exchange rules. In the new Chapter XXXI series of rules, the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable, existing FINRA registration requirement.[17]

The Exchange notes that the structure of this rule filing, as well as newly proposed Chapter XXXI series of rules, is based on a recent rule filing by the Exchange's affiliate, MIAX, as well as the Nasdaq Stock Market.[18] The similar Nasdaq Stock Market filing also amended, reorganized and enhanced membership, registration and qualification rules for the Nasdaq Stock Market, and was based on the FINRA Rule Changes.[19] The proposed new Chapter XXXI series of rules is also being proposed for adoption by MIAX PEARL's affiliate exchange, MIAX Emerald, LLC as new MIAX Emerald Chapter XIX, in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of the affiliated exchanges among MIAX, MIAX PEARL and MIAX Emerald. The references throughout this filing to Exchange Rules 301, 1301, 1302, 1306, 1307, 1309, 1310 and 1319 will be construed to refer to the corresponding MIAX Rules for those same rule numbers.

New Proposed Rules and Proposed Changes to Current Exchange Rules

A. Registration Requirements (Proposed Exchange Rule 3100)

Exchange Rule 203(a) currently requires individuals and associated persons engaged, or to be engaged, in the securities business of a Member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.[20]

Proposed Exchange Rule 3100 provides that each person engaged in the securities business of a Member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Exchange Rule 3101, unless exempt from registration pursuant to proposed Exchange Rule 3102.[21] Proposed Exchange Rule 3100 also provides that such person is not qualified to function in any registered capacity other than that for which the

incorporated from the NYSE (the ''Incorporated NYSE rules''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

[14] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements). *See also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

[15] *See supra* note 4.

[16] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities). In that rule change, FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[17] *See id.*

[18] *See* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules). *See also supra* note 4.

[19] *See id.*

[20] In general the 3100 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange. However, the Exchange also proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, based upon a current Nasdaq Stock Market rule. *See* Nasdaq Stock Market, General 9, Section 1, Rule 1.1210, Supplementary Material .12; *see also* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078). These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the Member's association with a person registered with the Exchange. The Exchange proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, in order to have uniform processes and requirements in this area across the Exchange.

[21] Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Exchange Rules 3100, Interpretations and Policies .03 and .10 of Exchange Rule 3100, Exchange Rules 3101 and 3103, and also by omitting as unnecessary from proposed Exchange Rule 3101, a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

person is registered, unless otherwise stated in the rules.

B. Minimum Number of Registered Principals (Proposed Exchange Rule 3100, Interpretation and Policy .01)

Exchange Rule 203, Interpretation and Policy .07, requires Members to register with the Exchange in a heightened capacity each individual acting in any of the following capacities: (a) Officer; (b) partner; (c) director; (d) supervisor of proprietary trading, market making or brokerage activities; and/or (e) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of these capacities (the ''two-principal requirement''). The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.[22]

The Exchange proposes to delete these requirements and in their place adopt new Exchange Rule 3100, Interpretation and Policy .01. The proposed rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Exchange Rule 3100, Interpretation and Policy .01, would require each Member, except a Member with only one associated person, to have at least two officers or partners who are registered as General Securities Principals, provided that a Member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the Member's activities.[23] For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that any Member with only one associated person is excluded from the two principal requirement. Proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that existing Members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 203, Interpretation and Policy .07. Finally, the Exchange proposes to retain the existing provision in Exchange Rule 203 permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.[24]

C. Permissive Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .02)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid the examination requirement. Current Exchange Rule 203(a) further prohibits a Member from making an application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

The Exchange proposes to replace these provisions with proposed Exchange Rule 3100, Interpretation and Policy .02. The Exchange also proposes to expand the scope of permissive registrations and to clarify a Member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Exchange Rule 3100, Interpretation and Policy .02, would allow any associated person to apply for or maintain any registration permitted by the Member. For instance, an associated person of a Member working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the Member. As another example, an associated person of a Member who is registered, and functioning solely as a General Securities Representative, would be able to obtain and maintain a General Securities Principal registration with the Member. Further, proposed Exchange Rule 3100, Interpretation and Policy .02, would allow an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a Member to obtain and maintain any registration permitted by the Member.

The Exchange proposes to permit the registration of such individuals for several reasons. First, a Member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow Members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a Member to obtain permissive registrations, but not others who equally are engaged in the Member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her

[22] Currently, Exchange Rule 203, Interpretation and Policy .08, describes when a Member is considered to be conducting only proprietary trading of the Member. Because the Exchange now proposes to delete Exchange Rule 203 in its entirety, Interpretation and Policy .08 of that rule would be reworded and relocated to Exchange Rule 100, Definitions, as a defined term.

[23] The principal registration categories are described in greater detail below.

[24] The Exchange does not propose to adopt provisions comparable to FINRA Rule 1210.01, which requires that all FINRA members have a Principal Financial Officer and a Principal Operations Officer, because the Exchange believes that its proposed Exchange Rule 3101(b)(3), Financial and Operations Principal, is sufficient. As described herein, proposed Exchange Rule 3101(b)(3), requires Member firms operating pursuant to certain provisions of the Commission's rules to designate at least one Financial and Operations Principal. Further, the Exchange does not propose to adopt FINRA Rule 1210.01, which requires that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not propose to recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in proposed Exchange Rule 3101(b)(7), and its inclusion is therefore unnecessary in proposed Exchange Rule 3100.

conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, Members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.[25] With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's direct supervisor is not required to be a registered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[26]

D. Qualification Examinations and Waivers of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .03)

Current Exchange Rule 203(a) provides that before a registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination (''SIE''), pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange proposes to replace this rule language with new Exchange Rule 3100, Interpretation and Policy .03, Qualification Examinations and Waivers of Examinations.

As part of the FINRA Rule Changes, FINRA adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the SIE) and a specialized knowledge examination appropriate to the representative's job functions at the firm with which he or she is associating.[27] Therefore, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that before the registration of a person as a representative can become effective under proposed Exchange Rule 3100, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Exchange Rule 3101(c). Proposed Exchange Rule 3100, Interpretation and Policy .03, also provides that before the registration of a person as a principal can become effective under proposed Exchange Rule 3100, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 3101(b).

Further, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that if the job functions of a registered representative change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.[28] Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities permitted under the existing representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, could do so by taking only the appropriate specialized knowledge examination.[29] However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.[30]

[25] FINRA Rule 1210.02 specifically cites FINRA's supervisory system rule, FINRA Rule 3110, by number. Proposed Exchange Rule 3100, Interpretation and Policy .02, refers generally to the Exchange's supervision rules rather than identifying them by number.

[26] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual. *See* proposed Exchange Rule 3100, Interpretation and Policy .02.

[27] *See supra* note 14.

[28] FINRA stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Exchange Rule 3100, Interpretation and Policy .03, provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 3100, Interpretation and Policy .03, also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Exchange Rule 3100, Interpretation and Policy .03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

[29] Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

[30] As discussed below, the Exchange proposes a four-year expiration period for the SIE.

In addition, individuals who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, under current Exchange Rule 203, Interpretation and Policy .05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange proposes to replace Exchange Rule 203, Interpretation and Policy .05, with proposed Exchange Rule 3100, Interpretation and Policy .03, with changes that track FINRA Rule 1210.03. The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative-level or principal-level registration category. Moreover, proposed Exchange Rule 3100, Interpretation and Policy .03, states that the Exchange will consider waivers of the SIE alone or the SIE and the representative-level and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Exchange Rule 3100, Interpretation and Policy .04)

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .04, which provides that subject to the requirements of proposed Exchange Rule 3101, Interpretation and Policy .03, a Member may designate any person currently registered, or who becomes registered, with the Member as a representative to function as a principal for a period of 120 calendar days prior to passing an appropriate principal qualification examination, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all prerequisite registration, fee and examination requirements prior to designation as principal. These requirements apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[31] Similarly, the proposed rule would permit a Member to designate any person currently registered, or who becomes registered, with the Member as a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under proposed Rule 3101.[32] This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to Members in meeting their principal requirements on a temporary basis.

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .05)

Before taking an examination, FINRA currently requires each candidate to agree to the SIE Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. The Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualification examination, the FINRA Sanction Guidelines recommend barring the individual.[33]

Effective October 1, 2018, FINRA codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own proposed Exchange Rule 3100, Interpretation and Policy .05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 301.[34] Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Exchange Rule 3100, Interpretation and Policy .05, also states that the Exchange considers all of the qualification examinations' content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations shall be prohibited and shall be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Exchange Rule 3100, Interpretation and Policy .05, would prohibit an applicant from receiving assistance while taking

[31] In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal.

[32] Proposed Exchange Rule 3100, Interpretation and Policy .04, omits the reference in FINRA Rule 1210.04 to Foreign Associates, which is a registration category not recognized by the Exchange, but otherwise tracks the language of FINRA Rule 1210.04.

[33] *See* FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at *https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf*.

[34] Exchange Rule 301, Just and Equitable Principles of Trade, prohibits Members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members have the same duties and obligations as Members under Exchange Rule 301.

the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.[35]

G. Waiting Periods for Retaking a Failed Examination (Proposed Exchange Rule 3100, Interpretation and Policy .06)

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .06, which provides that any person who fails to pass a qualification examination prescribed by the Exchange may retake that examination again after a period of 30 calendar days from the date of the person's last attempt to pass that examination.[36] Proposed Exchange Rule 3100, Interpretation and Policy .06, further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days has elapsed from the date of the person's last attempt to pass that examination. These waiting periods would apply to the SIE and the representative and principal examinations.[37]

H. Continuing Education (''CE'') Requirements (Proposed Exchange Rule 3100, Interpretation and Policy .07)

The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, which CE requirements the Exchange proposes to reorganize, renumber and adopt as proposed Exchange Rule 3103. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Exchange Rule 3103, as discussed below.[38] Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements. Consistent with current practice, proposed Exchange Rule 3100, Interpretation and Policy .07, would also provide that if a person registered with a Member has a CE deficiency with respect to that registration, such person shall not be permitted to be registered in another registration category with the Exchange under proposed Exchange Rule 3101 with that Member or to be registered in any registration category with the Exchange under proposed Exchange Rule 3101 with another Member, until the person has satisfied the deficiency.

I. Lapse of Registration and Expiration of SIE (Proposed Exchange Rule 3100, Interpretation and Policy .08)

Current Exchange Rule 203(h) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. Any person who last passed the SIE or who was last registered as a Representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a Representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange proposes to delete Exchange Rule 203(h), and replace it with proposed Exchange Rule 3100, Interpretation and Policy .08, Lapse of Registration and Expiration of SIE.

Proposed Exchange Rule 3100, Interpretation and Policy .08, contains language comparable to that of Exchange Rule 203(h) but also clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration. Proposed Exchange Rule 3100, Interpretation and Policy .08, also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange proposes that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative-level and principal-level registrations. The representative-level and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Exchange Rule 3100, Interpretation and Policy .09)

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .09, to provide a process whereby individuals working for a financial services industry affiliate of a Member[39] would be able to terminate their registrations with the Member and be granted a waiver of their requalification requirements upon re-registering with a Member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.[40] The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including

[35] The Exchange does not propose to adopt portions of FINRA Rule 1210.05, which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

[36] Proposed Exchange Rule 3100, Interpretation and Policy .06, has no counterpart in existing Exchange rules.

[37] FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange does not propose to include this language in proposed Exchange Rule 3100, Interpretation and Policy .06, as the Exchange will not apply the proposed 3100 Series of rules in any event to individuals who are not associated persons of Members.

[38] The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, in connection with the adoption of proposed Exchange Rule 3100, Interpretation and Policy .07.

[39] Proposed Exchange Rule 3100, Interpretation and Policy .09, defines a ''financial services industry affiliate of a Member'' as a legal entity that controls, is controlled by or is under common control with a Member and is regulated by the Commission, Commodity Futures Trading Commission (''CFTC''), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

[40] There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .09, in the Exchange's existing rules. FINRA Rule 1210.09 was adopted as a new waiver process for FINRA registration, as part of the FINRA Rule Changes. *See supra* note 14.

senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they return to the firm.[41]

Under the waiver process in proposed Exchange Rule 3100, Interpretation and Policy .09, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the Member with which the individual is registered would notify the Exchange of the FSA designation. The Member would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a Member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that Member.[42] An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation [43] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a Member other than the Member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one Member may request a waiver for the individual during the seven-year period.[44]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a Member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange also proposes to make corresponding changes in proposed Exchange Rule 3103.

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,[45] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the Member that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a Member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a Member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a Member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a Member so long as the individual is continuously working for an affiliate. Further, a Member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[46] An individual who has been designated as an FSA-eligible person by a Member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a Member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Exchange Rule 3100, Interpretation and Policy .10)

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .10, Status of Persons Serving in the Armed Forces of the United States.[47] Proposed Exchange Rule 3100, Interpretation and Policy .10(a), would permit a registered person of a Member who volunteers for or is called into active duty in the Armed Forces of the United States to be placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such Member upon his or her return to active employment with the Member. The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing

[41] *See supra* note 14.

[42] For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

[43] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[44] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

[45] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

[46] For example, if a Member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the Member for three years and re-registers the individual, the Member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the Member for another three years, the Member could submit a second waiver request and re-register the individual upon returning to the Member.

[47] There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .10, in the Exchange's current rules.

Member may allow the registered person to enter into an arrangement with another registered person of the Member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Exchange Rule 3103 during the pendency of such inactive status.[48]

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(b), a Member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to the Exchange, on inactive status while the Member remains on active military duty, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor Member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(c), if a person who was formerly registered with a Member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceased to be registered with a Member, the Exchange shall defer the lapse of registration requirements set forth in proposed Exchange Rule 3100, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE). The Exchange would defer the lapse of registration requirements and the SIE commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a Member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 3100, Interpretation and Policy .08, reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

Further, under proposed Exchange Rule 3100, Interpretation and Policy .10(c), if a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a Member, the Exchange would defer the lapse of registration requirements set forth in proposed Exchange Rule 3100, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE) during the pendency of his or her active service in the Armed Forces of the United States. The Exchange would defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a Member within 90 days following completion of active service, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE would consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 3100, Interpretation and Policy .08.[49]

L. Impermissible Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .11)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid an examination requirement. This rule also prohibits a Member from applying for the registration of a person as representative or principal where the Member does not intend to employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Exchange Rule 203(a).

In light of proposed Exchange Rule 3100, Interpretation and Policy .02, Permissive Registrations, discussed above, the Exchange proposes to delete these provisions of current Exchange Rule 203(a) and instead adopt proposed Exchange Rule 3100, Interpretation and Policy .11, prohibiting a Member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Exchange Rule 3100.[50]

M. Registration Categories (Proposed Exchange Rule 3101)

The Exchange proposes to adopt new and revised registration category rules and related definitions in proposed Exchange Rule 3101, Registration Categories.[51]

[48] The relief provided in proposed Exchange Rule 3100, Interpretation and Policy .10(a), would be available to a registered person during the period that such person remains registered with the Member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another Member upon completion of his or her active duty. The relief would apply only to a person registered with a Member and only while the person remains on active military duty. Further, the Member with which such person is registered would be required to promptly notify the Exchange of such person's return to active employment with the Member.

[49] *See* Nasdaq Stock Market, General 9, Regulation, Section 1 Registration, Qualification and Continuing Education, Rule 1.1210.10(c).

[50] As discussed above, the Exchange also proposes to adopt Exchange Rule 3100, Interpretation and Policy .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 3100, Interpretation and Policy .12, is based upon portions of current Exchange Rules 203 and 1301. *See also supra* note 20.

[51] For ease of reference, the Exchange proposes to adopt as Exchange Rule 3101, Interpretation and Policy .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

1. Definitions (Proposed Exchange Rule 3101(a)) [52]

The Exchanges proposes to adopt Exchange Rule 3101(a) to define certain registration categories and terms used throughout the Exchange's new proposed 3100s Series of rules. First, the Exchange proposes to adopt a definition for the term ''actively engaged in the management of the Member's securities business,'' which is used to describe the functions of a ''principal,'' as more fully discussed below.[53] The Exchange proposes that the term ''actively engaged in the management of the Member's securities business'' means the management of, and the implementation of corporate policies related to, such business, as well as managerial decision-making authority with respect to the Member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the Member's executive, management or operations committees.

Next, the Exchange proposes to adopt a definition for the term ''Financial and Operations Principal,'' which the Exchange proposes to mean a person associated with a Member whose duties include (i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (ii) final preparation of such reports; (iii) supervision of individuals who assist in the preparation of such reports; (iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the Member's books and records from which such reports are derived; (v) supervision and/or performance of the Member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the Member's back office operations; and (vii) any other matter involving the financial and operational management of the Member.

Next, the Exchange proposes to adopt a definition for the term ''principal'' and include it in newly proposed Exchange Rule 3101(a). The Exchange proposes to adopt a definition of ''principal,'' which would mean any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). The term ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules.

Finally, the Exchange proposes to adopt a definition for the term ''representative'' in proposed Exchange Rule 3101(a). Currently, the Exchange's rules do not define the term ''representative.'' Proposed Exchange Rule 3101(a) would define the term ''representative'' as any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions.

2. Principal Registration Categories (Proposed Exchange Rule 3101(b))

i. General Securities Principal (Proposed Rule 3101(b)(1))

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange proposes to adopt Exchange Rule 3101(b)(1), which would establish an obligation to register as a General Securities Principal, subject to certain exceptions.[54] Proposed Exchange Rule 3101(b)(1) states that each principal is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of those categories.[55] Proposed Exchange Rule 3101(b)(1)(i)(C) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if the principal is engaged in options sales activities, he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.[56]

Proposed Exchange Rule 3101(b)(1)(ii) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

The Exchange does not propose to adopt FINRA Rule 1220(a)(2)(B), which permits an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.[57]

ii. Compliance Official (Proposed Exchange Rule 3101(b)(2))

Currently, Exchange Rule 203(f) requires each Member and Member organization that is a registered broker-dealer to designate a Chief Compliance Officer on Schedule A of Form BD and requires individuals designated as a Chief Compliance Officer to register

[52] The Exchange notes that proposed Exchange Rule 3101 differs from the Nasdaq Stock Market rule filing in that the Exchange has consolidated the definitions for various registration categories into one section, proposed Exchange Rule 3101(a), whereas the Nasdaq Stock Market filing includes the registration category definition in each individual section pertaining to that specific registration category type. *See supra* note 18.

[53] *See also supra* note 9.

[54] There is no counterpart to proposed Exchange Rule 3101(b)(1) in the Exchange's current rules.

[55] The Exchange proposes to recognize the General Securities Principal registration category for the first time in this proposed rule change.

[56] *See* Nasdaq Stock Market, General 9, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1220(a)(2)(A)(i)–(iv). Proposed Exchange Rule 3901(b)(1) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA Rule 1220(a)(2)(A). The Exchange therefore proposes to reserve Exchange Rules 3901(b)(1)(i)(B) and (D).

[57] Proposed Exchange Rule 3101(b)(1) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 3101(b)(1)(i)(A) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are ''limited to'' (rather than ''include'') the functions of a more limited principal. The Exchange believes that activities ''limited to'' expresses the intent of that exception more accurately than activities that ''include.''

with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.[58]

The Exchange proposes to delete Exchange Rule 203(f) and adopt Exchange Rule 3101(b)(2) in its place. Proposed Exchange Rule 3101(b)(2) would provide that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination. However, pursuant to Exchange Rule 3101(b)(2)(iii), an individual designated as a Chief Compliance Officer on Schedule A of Form BD of a Member that is engaged in limited securities business may be registered in a principal category under proposed Exchange Rule 3101(b) that corresponds to the limited scope of the Member's business.

Additionally, proposed Exchange Rule 3101(b)(2)(iv) would provide that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a Member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (c)(3) as a Securities Trader, and to pass the Compliance Official qualification exam.[59]

iii. Financial and Operations Principal (Proposed Exchange Rule 3101(b)(3))

Current Exchange Rule 203(e) provides that each Member subject to Rule 15c3–1 of the Act must designate a Financial/Operations Principal. It specifies that the duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. It requires Financial/Operations Principal to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). It further provides that each Financial/Operations Principal designated by a Member shall be registered in that capacity with the Exchange as prescribed by the Exchange, and that a Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

The Exchange proposes to delete Exchange Rule 203(e) and adopt in its place Exchange Rule 3101(b)(3). Under the new rule, every Member of the Exchange that is operating pursuant to the provisions of Rules 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8) of the Commission, shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in paragraph (a) of proposed Exchange Rule 3101. In addition, each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

Proposed Exchange Rule 3101(b)(3)(ii) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, proposed Exchange Rule 3101(b)(3)(iii) would prohibit a person registered solely as a Financial and Operations Principal from functioning in a principal capacity with responsibility over any area of business activity not described in paragraph (a) of the rule for a Financial and Operations Principal.[60]

iv. Investment Banking Principal (Proposed Exchange Rule 3101(b)(4))

The Exchange does not recognize the Investment Banking Principal registration category and proposes to reserve Exchange Rule 3101(b)(4), retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Principal (Proposed Exchange Rule 3101(b)(5))

The Exchange does not recognize the Research Principal registration category and proposes to reserve Exchange Rule 3101(b)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Securities Trader Principal (Proposed Exchange Rule 3101(b)(6))

Current Exchange Rule 203(c) provides that Members that are individuals and associated persons of Members included within the definition of Option Principal in Exchange Rule 100 and who will have supervisory responsibility over the securities trading activities described in Exchange Rule 203(d) shall become qualified and registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person shall become qualified and registered as a Securities Trader under Rule 1302(e) and pass the SIE and General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Exchange Rule 203(d), unless such person is separately qualified and

[58] Exchange Rule 203(f) further provides that a person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to: (1) Any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; (3) the imposition of a fine of $5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or (4) the imposition of a fine of $5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

[59] Proposed Exchange Rule 3101(b)(2) differs from FINRA Rule 1220(a)(3), Compliance Officer, as the Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Exchange Rule 3101(b)(2), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the Member's business.

[60] FINRA Rule 1220(a)(4) differs from proposed Exchange Rule 3101(b)(3) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Exchange Rule 3101(b)(3) contains a requirement, which the FINRA rule does not, that each person associated with a Member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange does not propose to adopt a Principal Financial Officer or Principal Operations Officer requirement similar to FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient.

registered in another appropriate principal registration category, such as the General Securities Principal registration category. Current Exchange Rule 203(c)(2) provides that a person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Exchange Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Exchange Rule 1302(e) and become registered as a Securities Trader Principal.

The Exchange proposes to delete Exchange Rule 203(c) and adopt in its place Exchange Rule 3101(b)(6), Securities Trader Principal. Proposed Exchange Rule 3101(b)(6) would require that a principal responsible for supervising the securities trading activities specified in proposed Exchange Rule 3101(c)(3)[61] register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

vii. Registered Options Principal (Proposed Exchange Rule 3101(b)(7))

The Exchange proposes to adopt Exchange Rule 3101(b)(7), Registered Options Principal, which would require that each Member that is engaged in transactions in options with the public have at least one Registered Options Principal.[62] Currently, Exchange Rule 100, Definitions, provides a definition for an ''Options Principal.'' In accordance with the proposal to adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' in Exchange Rule 100, Definitions. As discussed below, the Exchange proposes to adopt a corresponding definition for a ''Registered Options Principal'' in Exchange Rule 100, which would refer to proposed Exchange Rule 3101(b)(7). In addition, each principal as defined in proposed Exchange Rule 3101(a) who is responsible for supervising a Member's options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, with one exception, as follows. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (b)(9) of this Rule in lieu of registering as a Registered Options Principal.[63]

Pursuant to proposed Exchange Rule 3101(b)(7)(ii), subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .08, each person registered with the Exchange as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 would, prior to or concurrent with such registration, be required to become registered pursuant to proposed Exchange Rule 3101(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.[64]

viii. Government Securities Principal (Proposed Exchange Rule 3101(b)(8))

The Exchange does not recognize the Government Securities Principal registration category and proposes to reserve Exchange Rule 3101(b)(8), retaining the caption solely to facilitate comparison with FINRA's rules.

ix. General Securities Sales Supervisor (Proposed Exchange Rules 3101(b)(9) and Interpretation and Policy .04)

The Exchange proposes to adopt Exchange Rule 3101(b)(9), General Securities Sales Supervisor, as well as Interpretation and Policy .04 to Exchange Rule 3101, which explains the purpose of the General Securities Sales Supervisor registration category.[65] Proposed Exchange Rule 3101(b)(9) provides that each principal, as defined in proposed paragraph (a) of this Rule, may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the securities business of a Member are limited to the securities sales activities of the Member, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the Member required to be maintained in branch offices by Exchange Act record-keeping rules. Further, a person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: (i) Supervision of market making commitments; (ii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3–3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.[66]

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to

[61] Proposed Exchange Rule 3101(c)(3), discussed below, provides for representative-level registration in the ''Securities Trader'' category.

[62] Proposed Exchange Rule 3101(b)(7) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

[63] Current Exchange Rule 1301(a) provides that no Member shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to Exchange Rule 1308) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. Exchange Rule 1301(b) provides that individuals who are delegated responsibility pursuant to Exchange Rule 1308 for the acceptance of discretionary accounts, for approving exceptions to a Member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the SIE, the General Securities Representative qualification examination (Series 7) and the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of Exchange Rule 1301 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than conforming all references to ''Options Principal'' with ''Registered Options Principal,'' as more fully discussed herein. Exchange Rule 203(g), which merely serves as a cross-reference to Exchange Rules 1301 and 1302, is unnecessary and is therefore proposed to be deleted with the rest of Exchange Rule 203.

[64] Although the Exchange does not currently list security futures products, it also proposes to adopt Exchange Rule 3101, Interpretation and Policy .02, which provides that each person who is registered with the Exchange as a General Securities Representative, Registered Options Principal, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Exchange Rule 3103 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 3101, Interpretation and Policy .02, omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange also proposes to adopt Exchange Rule 3101, Interpretation and Policy .03, which requires notification to the Exchange in the event a Member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the Member's options business in that event.

[65] Proposed Exchange Rule 3101(b)(9) has no counterpart in the Exchange's current rules.

[66] Proposed Exchange Rule 3101(b)(9), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of ''securities trading'' covered by the Exchange's new 3100 Series of rules.

become registered pursuant to proposed Exchange Rule 3101(c)(1) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.[67]

x. Investment Company and Variable Contracts Products Principal (Proposed Exchange Rule 3101(b)(10))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal category and is reserving proposed Exchange Rule 3101(b)(10), retaining the caption solely to facilitate comparison with FINRA's rules.

xi. Direct Participation Programs Principal (Proposed Exchange Rule 3101(b)(11))

The Exchange does not recognize the Direct Participation Programs Principal registration category and is reserving proposed Exchange Rule 3101(b)(11), retaining the caption solely to facilitate comparison with FINRA's rules.

xii. Private Securities Offerings Principal (Proposed Exchange Rule 3101(b)(12))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving proposed Exchange Rule 3101(b)(12), retaining the caption solely to facilitate comparison with FINRA's rules.

xiii. Supervisory Analyst (Proposed Exchange Rule 3101(b)(13))

The Exchange does not recognize the Supervisory Analyst registration category and is reserving proposed Exchange Rule 3101(b)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

3. Representative Registration Categories (Proposed Exchange Rule 3101(c))

i. General Securities Representative (Proposed Exchange Rule 3101(c)(1))

The Exchange proposes to adopt Exchange Rule 3101(c)(1), General Securities Representative. Proposed Exchange Rule 3101(c)(1)(i) would state that each representative as defined in proposed Exchange Rule 3101(a) is required to register with the Exchange as a General Securities Representative, subject to the exception that if a representative's activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Exchange Rule 3101(c)(1)(ii) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.[68]

In addition, the Exchange proposes to adopt Exchange Rule 3101, Interpretation and Policy .01, to provide certain individuals who are associated persons of firms and who hold specific foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. In particular, pursuant to proposed Exchange Rule 3101, Interpretation and Policy .01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. This proposed rule would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

ii. Operations Professional (Proposed Exchange Rule 3101(c)(2))

The Exchange does not recognize the Operations Professional registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(2), Operations Professional, and related Interpretation and Policy .05 to proposed Exchange Rule 3101, Scope of Operations Professional Requirement, retaining the caption solely to facilitate comparison with FINRA's rules.

iii. Securities Trader (Proposed Exchange Rule 3101(c)(3))

Pursuant to current Exchange Rule 203(d)(1) and (2), Members that are individuals and associated persons of Members must register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the Member.

The Exchange proposes to delete Exchange Rule 203(d), and replace it with proposed Exchange Rule 3101(c)(3).[69] Proposed Exchange Rule 3101(c)(3) would require each representative as defined in paragraph (a) of this Rule to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with a Member.

Additionally, proposed Exchange Rule 3101(c)(3)(i) would require each person associated with a Member who is: (i) Primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.[70]

[67] Unlike FINRA Rule 1220.04, proposed Exchange Rule 3101, Interpretation and Policy .04, refers to ''multiple exchanges'' rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

[68] Proposed Exchange Rule 3101(c)(1)(i) differs from FINRA Rule 1220(b)(2)(A) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

[69] Proposed Exchange Rule 3101(c)(3)(i) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is ''effected otherwise than on a securities exchange.'' Additionally, the FINRA rule does not specifically extend to options trading.

[70] As noted above, this new registration requirement was added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add

Continued

For purposes of this proposed new registration requirement an ''algorithmic trading strategy'' would be an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.[71] The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, Members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A Member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a Member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Exchange Rule 3101(c)(3)(ii), each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, to pass the SIE and the Securities Trader qualification examination.

Further, the Exchange proposes to adopt Exchange Rule 3101(c)(3), which defines the requirements and qualifications for a Securities Trader, as well as its proposal to amend Exchange Rule 100 to insert definitions for ''proprietary trading'' and ''proprietary trading firm,'' as described below.

iv. Investment Banking Representative (Proposed Exchange Rule 3101(c)(4))

The Exchange does not recognize the Investment Banking Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(4), Investment Banking Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Analyst (Proposed Exchange Rule 3101(c)(5))

The Exchange does not recognize the Research Analyst registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(5), Research Analyst, retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Investment Company and Variable Products Representative (Proposed Exchange Rule 3101(c)(6))

The Exchange does not recognize the Investment Company and Variable Products Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(6), Investment Company and Variable Products Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

vii. Direct Participation Programs Representative (Proposed Exchange Rule 3101(c)(7))

The Exchange does not recognize the Direct Participation Programs Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(7), Direct Participation Programs Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

viii. Private Securities Offerings Representative (Proposed Exchange Rule 3101(c)(8))

The Exchange does not recognize the Private Securities Offerings Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(8), Private Securities

options to the scope of products within the proposed rule's coverage. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).

[71] *See supra* note 16.

Offerings Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

4. Eliminated Registration Categories (Proposed Exchange Rule 3101, Interpretation and Policy .06)

Proposed Exchange Rule 3101, Interpretation and Policy .06, has no practical relevance to the Exchange, but is included because the Exchange proposes to adopt rules similar to FINRA's 1200 Series, on a near uniform basis. Accordingly, proposed Exchange Rule 3101, Interpretation and Policy .06, provides that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .08, individuals who are registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category.

5. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Exchange Rule 3101(b)(1)(ii) (relating to General Securities Principals) and proposed Exchange Rule 3101, Interpretation and Policy .06 (relating to the eliminated registration categories), the Exchange proposes to include grandfathering provisions in proposed Exchange Rule 3101(b)(7) (Registered Options Principal), Exchange Rule 3101(c)(1) (General Securities Representative), and Exchange Rule 3101(c)(3) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt From Registration (Proposed Exchange Rules 3902 and Interpretation and Policy .01)

Current Exchange Rule 203(b) currently provides that the following individual Members and individual associated persons of Members are not required to register:

(1) Individual associated persons whose functions are solely and exclusively clerical or ministerial;

(2) individual Members and individual associated persons who are not actively engaged in the securities business;

(3) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation; (4) individual associated persons whose functions are related solely and exclusively to:

(i) Transactions in commodities;

(ii) transactions in security futures; and/or

(iii) effecting transactions on the floor of another securities exchange and who are registered floor members with such exchange.

The Exchange proposes to delete Exchange Rule 203(b) and adopt provisions of Exchange Rule 203(b) in the newly proposed Exchange Rule 3102, subject to certain changes. Current Exchange Rule 203(b)(2) exempts from registration those individual Members and individual associated persons of Members who are not actively engaged in the securities business. Exchange Rule 203(b)(3) also exempts from registration those associated persons whose functions are related solely and exclusively to a Member's need for nominal corporate officers or for capital participation.[72] The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for individual Members and individual associated persons who are not ''actively engaged'' in a Member's securities business, associated persons whose functions are related only to a Member's need for nominal corporate officers or associated persons whose functions are related only to a Member's need for capital participation is consistent with this analytical framework.[73] The Exchange therefore proposes to delete these exemptions. Exchange Rule 203(b)(4)(iii) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Exchange Rule 3102 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.[74] Additionally, the Exchange proposes to adopt paragraph (c) of proposed Exchange Rule 3102, pursuant to which persons associated with a Member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.[75]

The Exchange proposes to adopt Exchange Rule 3102, Interpretation and Policy .01, to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the

[72] These exemptions generally apply to associated persons who are corporate officers of a Member in name only to meet specific corporate legal obligations or who only provide capital for a Member, but have no other role in a Member's business.

[73] The Exchange also proposes to delete Exchange Rule 203, Interpretation and Policy .06, which specifies circumstances in which the Exchange considers an individual Member or an individual associated person to be engaged in the securities business of a Member or Member organization. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

[74] Proposed Exchange Rule 3102 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Stock Market Rule 1.1230, which are not included in FINRA Rule 1230. *See* Nasdaq Stock Market, General 9, Regulations, Section 1, Registration, Qualification and Continuing Education, Rule 1.1230.

[75] Individuals described by paragraph (c) of proposed Exchange Rule 3102 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA eliminated this registration category effective October 1, 2018, and the Exchange never recognized it.

registered person contacts the customer to confirm the order details before entering the order.

O. Changes to Continuing Education Requirements (Proposed Exchange Rule 3103)

Continuing education for registered persons includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the Member. The Exchange proposes to adopt Exchange Rule 3103 to better organize the continuing education requirements.[76]

1. Regulatory Element

The Exchange proposes to adopt the term ''covered person'' in proposed Exchange Rule 3103(a). For purposes of the Regulatory Element, the Exchange proposes to define the term ''covered person'' in proposed Exchange Rule 3103(a)(5), as any person registered pursuant to proposed Exchange Rule 3100, including any person who is permissively registered pursuant to proposed Exchange Rule 3100, Interpretation and Policy .02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Exchange Rule 3100, Interpretation and Policy .09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term ''covered persons'' corresponds to the requirements of proposed Exchange Rule 3100, Interpretation and Policy .09. In addition, consistent with proposed Exchange Rule 3100, Interpretation and Policy .09, proposed Exchange Rule 3103(a)(1) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange proposes to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Exchange Rule 3103(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the Member with which the person is associated has a policy prohibiting such trail or residual commissions.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Exchange Rule 3103(b)(2)(ii), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Requirements for Uniform Rules (Proposed Exchange Rule 3104)

Current Exchange Rule 203, Interpretations and Polices .01–.03, state that each individual required to register shall electronically file a Uniform Application for Securities Industry Registration (''Form U4'') through the Central Registration Depository system (''Web CRD'') operated by FINRA and to electronically submit to Web CRD any required amendments to Form U4. Further, any Member or Member organization that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements, which include the filing of a Form U5.

The Exchange proposes to delete current Exchange Rule 203, Interpretations and Polices .01–.03, and to replace them with proposed Exchange Rule 3104, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and Form U5 electronic filing requirements into a single rule. The proposed rule provides that all forms required to be filed under the Exchange's registration rules including the Exchange Rule 3100 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under proposed Exchange Rule 3104(b), each Member would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he or she is filing this information on behalf of the Member and the Member's associated persons. Under proposed Exchange Rule 3104, Interpretation and Policy .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in proposed Exchange Rule 3104(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Pursuant to proposed Exchange Rule 3104(c)(1), every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the Member's recordkeeping requirements, it would be required to retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Exchange Act Rule 17a–4(e)(1) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Proposed Exchange Rule 3104(c)(2) and Interpretations and Policies .03 and .04 to proposed Exchange Rule 3104, provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Proposed Exchange Rule 3104(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a Member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint

[76] Proposed Exchange Rule 3103 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

information. It further provides that if a Member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under this proposed rule, the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 3101. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Proposed Exchange Rule 3104(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the Member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a–4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Exchange Rule 3104, Interpretation and Policy .02, a Member could enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the Member and the Member's associated persons. Notwithstanding the existence of such an agreement, the Member would remain responsible for complying with the requirements of the Rule.

Q. Exchange Rule 100, Definitions

The Exchange proposes to amend Exchange Rule 100, Definitions, to amend the term ''associated person'' or ''person associated with a Member.'' Currently, the term associated person or person associated with a Member means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member.

The Exchange proposes to amend the term associated person or person associated with a Member to insert, at the end of the definition, the phrase ''except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.'' With the proposed change, the definition for associated person or person associated with a Member would be as follows:

The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions to adopt definitions for the following terms: Person, proprietary trading, and proprietary trading firm. The Exchange proposes that the term ''person'' shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

The Exchange proposes that the term ''proprietary trading'' for the purpose of proposed Exchange Rule 3100, means trading done by a Member having the following characteristics: (i) The Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the Member are the trading member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

The Exchange proposes that the term ''proprietary trading firm'' for the purpose of proposed Exchange Rule 3100, means a Member organization or applicant with the following characteristics: (i) The applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

As described above, in connection with the Exchange's proposal to adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' from Exchange Rule 100 in order to provide consistency and clarity within the rule text. In proposed Exchange Rule 3101(b)(7), the Exchange sets forth the requirements and qualifications for a ''Registered Options Principal,'' which incorporates, and adds to, the rule text for the Exchange's current definition for ''Options Principal.'' Accordingly, the Exchange proposes to delete the term ''Options Principal'' and replace all references in the rule text to ''Options Principal'' with the new proposed term ''Registered Options Principal.'' The Exchange also proposes to adopt a definition for a ''Registered Options Principal'' in Exchange Rule 100, that will provide a cross-reference to Exchange Rule 3101(b)(7).

R. Exchange Rule 601, Registered Options Traders

In accordance with the proposed change to delete Exchange Rule 203 in its entirety, revise and relocate the provisions of Exchange Rule 203 to the newly proposed 3100 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 601(b)(2). Currently, Exchange Rule 601(b)(2) has a cross-reference to Exchange Rule 203(a). The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100.

S. Exchange Rule 1000, Disciplinary Jurisdiction

The Exchange proposes to amend a cross-reference in Exchange Rule 1000(c). Currently, Exchange Rule 1000(c) has a cross-reference to Exchange Rule 1302. The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100, Interpretation and Policy .12.

T. Exchange Rule 1014, Imposition of Fines for Minor Rule Violations

The Exchange proposes to amend the cross-references in Exchange Rule 1014(d)(14) that are to current Exchanges Rules 1301, 1302 and 1303. The Exchange proposes to amend the cross-references in Exchange 1014(d)(14) that are to Exchange Rules 1301, 1302 and 1303 to the newly proposed Exchange Rule 3104, which incorporates that deleted rule text. Accordingly, the Exchange proposes to

amend the cross-reference in Exchange Rule 1014(d)(14) to now be to proposed Exchange Rule 3104.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[77] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[78] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[79] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes will streamline, and bring consistency and uniformity to, the Exchange's registration rules. The Exchange believes that this will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule changes will expand the scope of permissive registrations, which, among other things, will allow Members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule changes will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a Member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule changes will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the Member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

The proposed rule changes, including additional definitions and changes to cross-references, make organizational changes to the Exchange's registration and qualification rules, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to ensure that all associated persons of Members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 3100 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, as well as the Exchange's affiliate, MIAX, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Exchange, thereby promoting uniformity of regulation across markets. The proposed 3100 Series of rules should in fact remove administrative burdens that currently exist for Members seeking to register associated persons on the Exchange featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of Members will be treated similarly under the new 3100 Series of rules in terms of standards of training, experience and competence for persons associated with Exchange Members.

With respect in particular to registration of developers of algorithmic trading strategies, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the covered activities. It also excludes supervisors who are not responsible for the ''day-to-day'' supervision or direction of the covered activities.

[77] 15 U.S.C. 78f(b).

[78] 15 U.S.C. 78f(b)(5).

[79] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [80] and Rule 19b–4(f)(6) thereunder.[81]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [82] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [83] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. According to the Exchange, the proposal is part of a larger effort to create uniform rules relating to registration, qualification examinations and continuing education of associated persons of Members among the Exchange and its affiliates, MIAX and MIAX Emerald, LLC. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[84]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–PEARL–2020–01 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–PEARL–2020–01. 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–PEARL–2020–01, and should be submitted on or before February 6,2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

J. Matthew DeLesDernier,

Assistant Secretary.

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[80] 15 U.S.C. 78s(b)(3)(A).

[81] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[82] 17 CFR 240.19b–4(f)(6).

[83] 17 CFR 240.19b–4(f)(6)(iii).

[84] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[85] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for recreational and gymnastic equipment consisting of manufactured kettlebells, rubber machine balls, Olympic weight plates, stretch bands, and spring collars under North American Industry Classification System Code (NAICS) 339920 and Product Service Code (PSC) 7830. This class waiver would exclude apparel and footwear.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) manufactured kettlebells, rubber machine balls, Olympic weight plates, stretch bands, and spring collars under NAICS code 339920/PSC 7830. This industry comprises establishments primarily engaged in manufacturing sporting and athletic goods (except apparel and footwear) and the PSC is for Recreational and Gymnastic Equipment.

According to the class waiver request, no small business manufacturer can supply the identified products to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item(s), regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted by February 18, 2020.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Carol Hulme, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI, and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Program Analyst, by telephone at 202–205–6347; or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406, require that recipients of Federal supply contracts (except those valued between $3,500 and $250,000) set aside for small business, SDVOSB,WOSB, EDWOSB, HUBZone, BD program participants, provide the product of a small business manufacturer or processor if the recipient of the set-aside is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines ''class of products'' based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products.

The SBA invites the public to comment on this pending request to waive the NMR for the following items: Manufactured kettlebells, rubber machine balls, Olympic weight plates, stretch bands, and spring collars. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at *https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers.*

David Loines,

Director, Office of Government Contracting.

[FR Doc. 2020–00454 Filed 1–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11002]

Bureau of Political-Military Affairs; Rescission of Statutory Debarment of Jami Siraj Choudhury, David Michael Janowski II, Netria Corporation, Jonathan Robert Reynolds, and State Metal Industries, Inc. Under the International Traffic in Arms Regulations

SUMMARY: Notice is hereby given that the Department of State has rescinded the statutory debarments of Jami Siraj Choudhury included in **Federal Register** notice of April 2, 2004, David Michael Janowski II included in **Federal Register** notice of August 25, 2009, Netria Corporation included in **Federal Register** notice of April 25, 2018, Jonathan Robert Reynolds included in **Federal Register** notice of September 3, 2003, and State Metal Industries, Inc. included in **Federal Register** notice of June 20, 2007. The aforementioned parties are hereinafter individually and collectively referred to as ''the Parties.''

DATES: This recission is effective on January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Jae Shin, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2107.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the Arms Export Control Act (AECA), 22 U.S.C. 2778(g)(4), prohibits the issuance of licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating the AECA and certain other U.S. criminal statues enumerated in § 38(g)(1) of the AECA. In addition, § 127.7(b) of the International Traffic in Arms Regulations (ITAR) provides for the statutory debarment of any person who has been convicted of violating or conspiring to violate the AECA. As stated in this provision, it is the policy of the Department not to consider applications for licenses or requests for approvals involving any person who has been statutorily debarred. Persons subject to statutory debarment are prohibited from participating directly or indirectly in any activities that are subject to the ITAR.

Each of the Parties pleaded guilty to violating the AECA, and the Department notified the public of the respective Parties' statutory debarments imposed pursuant to ITAR § 127.7(c) via notices in the **Federal Register**. The notices provided that the Parties were ''prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.''

In accordance with ITAR § 127.7(b), reinstatement may only be approved after submission of a request by the debarred party. In response to such a request from the Parties for reinstatement, the Department has conducted a thorough review of the circumstances surrounding each of the Parties' convictions, and has determined that the Parties have individually taken appropriate steps to address the causes of the violations sufficient to warrant rescission of their respective notice of statutory debarment. Therefore, pursuant to ITAR § 127.7(b), the Department determines it is no longer in the national security and foreign policy interests of the United States to maintain the policy as applied to the Parties, and the Department hereby rescinds the notice of the Parties' statutory debarment.

The Department notes that the **Federal Register** notice of debarment for each of the Parties stated that ''export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by § 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.'' (See respective FRN). The Department is no longer requiring that export privileges be reinstated pursuant to ITAR § 127.11 and § 38(g)(4) of the AECA prior to the rescission of statutory debarment. This change in policy recognizes that the circumstances warranting statutory debarment may be

different from those warranting the revocation of export privileges. The Department may find, as it does with regard to each of the Parties, that the national security and foreign policy interests of the United States are not advanced by maintaining the Department-imposed ITAR § 127.7(b) prohibition on persons convicted of violating or conspiring to violate the AECA from ''participating directly or indirectly in any activities that are subject to [the ITAR]'' and where the debarred person may not meet the requirements of ITAR § 127.11(b) (implementing the restrictions of § 38(g)(4) of the AECA).

This notice rescinds the statutory debarment of each of the Parties but does not provide notice of reinstatement of export privileges for each of the Parties pursuant to the statutory requirements of § 38(g)(4) of the AECA and ITAR § 127.11. As required by the statute, the Department may not issue a license directly to any of the Parties except as may be determined on a case-by-case basis after interagency consultations, a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. Any determination by the Department regarding the reinstatement of export privileges for each of the Parties will be made in accordance with these statutory and regulatory requirements and will be the subject of a separate notice. All otherwise eligible persons may engage in exports of any of the Parties' manufactured defense articles, incorporate any of the Parties' manufactured items into defense articles for export, or otherwise engage in transactions subject to the ITAR without providing prior written notification of the Parties' involvement as otherwise required by ITAR § 127.1(d) and the transaction exception requirements of the **Federal Register** notice of statutory debarment.

Dated: December 16, 2019.

R. Clarke Cooper,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2020–00656 Filed 1–15–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 11004]

Advisory Committee on Historical Diplomatic Documentation—Notice of Closed and Open Meetings for 2020

The Advisory Committee on Historical Diplomatic Documentation will meet on March 2, June 15, September 14, and December 7, 2020, in open session to discuss unclassified matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series.

The Committee will meet in open session from 11:00 a.m. until noon in SA–4D Conference Room 109, Department of State, 2300 E Street NW, Washington DC, 20372 (Potomac Navy Hill Annex), on all four dates. RSVP and requests for reasonable accommodation should be sent as directed below:

- March 2, not later than February 24, 2020.
- June 15, not later than June 8, 2020.
- September 14, not later than September 7, 2020.
- December 7, not later than November 30, 2020.

Closed Sessions. The Committee's sessions in the afternoon of Monday, March 2, 2020; in the morning of Tuesday, March 3; in the afternoon of Monday, June 15, 2020; in the morning of Tuesday, June 16, 2020; in the afternoon of Monday, September 14, 2020; in the morning of Tuesday, September 15, 2020; in the afternoon of Monday, December 7, 2020; and in the morning of Tuesday, December 8, 2020, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. Government or military ID) are required for entrance into the Department of State building. Members of the public planning to attend the open meetings should RSVP, by the dates indicated above, to Julie Fort, Office of the Historian (202–955–0214). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. Government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/wp-content/uploads/2019/05/Security-Records-STATE-36.pdf,* for additional information.

Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20372, telephone (202) 955–0214, (email *history@state.gov*).

Note that requests for reasonable accommodation received after the dates indicated in this notice will be considered but might not be possible to fulfill.

Adam M. Howard,

Executive Secretary, Advisory Committee on Historical, Diplomatic Documentation, Department of State.

[FR Doc. 2020–00629 Filed 1–15–20; 8:45 am]

BILLING CODE 4710–11–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36368]

Soo Line Corporation—Control—Central Maine & Quebec Railway, Inc.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36368; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on December 17, 2019, by Soo Line Corporation (Soo Line Corp.) and Central Maine & Quebec Railway US Inc. (CMQR US) (collectively, Applicants). The application seeks Board approval for Soo Line Corp., an indirect wholly owned holding company subsidiary of Canadian Pacific Railway Company (CP), to acquire

control of CMQR US. This proposal is referred to as the Transaction.

The Board finds that the application is complete. The Board also makes the preliminary determination, based on the evidence presented in the application, that the Transaction is a minor transaction because it ''clearly will not have any anticompetitive effects'' and that, if any such anticompetitive effects were found to exist, they would ''clearly be outweighed by the [T]ransaction's anticipated contribution to the public interest in meeting significant transportation needs.'' 49 CFR 1180.2. The Board emphasizes that this is not a final determination and may be rebutted by subsequent filings and evidence submitted into the record for this proceeding. The Board will carefully consider any claims that the Transaction would have anticompetitive effects.

DATES: The effective date of this decision is January 16, 2020. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than February 4, 2020, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by February 18, 2020. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the primary application or related filings must be filed by March 20, 2020. *See* Appendix (Procedural Schedule). A final decision in this matter will be served no later than May 4, 2020. Further procedural orders, if any, would be issued by the Board, if necessary.

ADDRESSES: Any filing submitted in this proceeding must be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) applicant Soo Line Corp.'s representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Ave. NW, Suite 800, Washington, DC 20006; (4) applicant CMQR US's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW #600, Washington, DC 20005; and (5) any other person designated as a Party of Record on the service list notice. As explained below, the service list notice will be issued as soon after February 4, 2020, as practicable.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Applicants seek the Board's prior review and authorization pursuant to 49 U.S.C. 11323–25 and 49 CFR part 1180 for Soo Line Corp. to acquire control of CMQR US. (Appl. 1.) Applicant Soo Line Corp. is an indirect, wholly owned subsidiary of CP. (*Id.* at 1 n.1.) Applicant CMQR US is a wholly owned subsidiary of Railroad Acquisition Holdings LLC (RAH). (*Id.* at 1, 6.) RAH is a wholly owned subsidiary of Fortress Transportation and Infrastructure Investors LLC. (*Id.* at 1 n.2.) Soo Line Corp. plans to acquire all of the outstanding membership interests of RAH, including all of the outstanding common stock of CMQR US, through a merger of Black Bear Acquisition LLC, a wholly owned subsidiary of Soo Line Corp., and RAH, pursuant to an Agreement and Plan of Merger (Merger Agreement). (*Id.* at 6.) RAH would be the surviving limited liability company and a wholly owned subsidiary of Soo Line Corp. (*Id.*)

CMQR US owns and operates approximately 244.2 miles of rail lines in Vermont and Maine and also has the right to operate on approximately 57.25 miles of rail line leased from the Maine Department of Transportation, for a total of approximately 301.45 route miles in the United States.[1] (*Id.* at 1, 18.) More specifically, these lines consist of the rail line beginning at a point in the vicinity of Searsport, Me., designated on CMQR US's system map as milepost 0.0± of CMQR US's Bangor Subdivision and continuing north through Maine through Brownville Junction, Me. to a point in the vicinity of Millinocket, Me., designated as milepost 109.00± of CMQR US's Millinocket Subdivision, a distance of approximately 109 miles; the rail line beginning at a point in the vicinity of Millinocket, designated on CMQR US's system map as milepost 0.0± of the East Millinocket Subdivision and continuing southeast to East Millinocket, Me., to a point designated as milepost 6.19± of CMQR US's East Millinocket Subdivision, a distance of approximately 6.19 miles; the rail line beginning at a point in the vicinity of Brownville Junction, designated on CMQR US's system map as milepost 0.0± on CMQR US's K.I. Subdivision and continuing to a point in the vicinity of Brownville Junction, designated as milepost 4.0± of the K.I. Subdivision, a distance of approximately 3.74 miles; the rail line beginning in the vicinity of Brownville Junction, from a point of connection with Eastern Maine Railway Company designated on CMQR US's system map as milepost 0.0± of CMQR US's Moosehead Subdivision and continuing west to the United States/Canada border near Skinner, Me., designated as milepost 101.80± of the Moosehead Subdivision, a distance of approximately 101.8 miles; the rail line beginning at the United States/Canada border crossing in the vicinity of Richford, Vt., designated on CMQR US's system map as milepost 26.25± of CMQR US's Newport Subdivision, continuing north into Canada, re-entering the United States near North Troy, Vt., and then continuing south to a point in the vicinity of Newport, Vt., designated as milepost 60.4± at the end of the Newport Subdivision, a distance of approximately 23.47 miles in the United States;[2] and the rail line leased from the Maine Department of Transportation beginning in the vicinity of Brunswick, Me., designated on CMQR US's system map as milepost 29.40± of CMQR US's Rockland Subdivision and continuing to a point in the vicinity of Rockland, Me., designated as milepost 86.65± of the Rockland Subdivision, a distance of approximately 57.25 miles. (*Id.* at 18–20.)

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Transaction. Applicants state that the only relevant financial arrangement is the payment of the purchase price by Soo Line Corp., as provided in the Merger Agreement. (*Id.* at 12.)

Passenger Service Impacts. Applicants state that the only passenger service operating on lines owned or operated by CMQR US is the National Railroad Passenger Corporation (Amtrak) service on the Rockland subdivision. (*Id.,* Ex. 15 at 13.) According to Applicants, there are no plans to make any changes to the operations or management of the Rockland operation that would alter Amtrak's future ability to operate. (*Id.*)

[1] Soo Line Corp. will also acquire 236.81 route miles of rail line from CMQR Canada and will seek authorization from the appropriate Canadian authority for that acquisition. (Appl. 2 n.3.)

[2] The Newport Subdivision crosses into Canada at milepost 32.63± and enters the United States again at milepost 43.32± near North Troy, Vt. (Appl. 19.)

Discontinuances/Abandonments. Applicants state that Soo Line Corp. does not plan to abandon or discontinue service on rail lines in the United States as a result of the Transaction. (*Id.* at 22, Ex. 15 at 13.)

Public Interest Considerations. Applicants assert that the Transaction would not result in the lessening of rail competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. (*Id.* at 2, 12.) Applicants state that the Transaction is an end-to-end line acquisition and note that neither applicant has lines that are parallel or duplicative of the other's system. (*Id.* at 12–13.) Applicants assert that there will be no negative competitive impacts and that no shipper would see a reduction in the number of competitive rail options as a result of the Transaction. (*Id.*)

According to Applicants, CMQR US will continue to maintain interline service agreements with Class II and Class III carriers with which it currently interchanges traffic, and none of the interline traffic originates or terminates at facilities on those carriers that are directly served by CP. (*Id.*)

Applicants claim that intermodal competition in Maine and Vermont is strong and that the Transaction will preserve and enhance competition by allowing Applicants to compete more vigorously against other rail carriers and transportation modes in the region. (*Id.* at 13–14.) The Transaction will, according to Applicants, allow them to provider faster, seamless, and more economical and efficient service. (*Id.*) In addition, Applications state that improved service will extend market reach for CP and CMQR customers, providing them direct access to markets on each other's systems, including certain import and export markets. (*Id.*)

Time Schedule for Consummation. Applicants state that the Transaction is scheduled to be consummated on December 30, 2019. (*Id.* at 7.) [3]

Environmental Impacts. Applicants state that, pursuant to 49 CFR 1105.6(c)(1), no environmental reporting is required because the environmental impacts of the Transaction fall below the thresholds established in 49 CFR 1105.7(e)(4) and (5). (Appl. 20–22.)

Historic Preservation Impacts. Applicants state that no historic report is required under 49 CFR 1105.8, as rail operations would continue after Soo Line Corp.'s purchase of CMQR US, and Soo Line Corp. has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. (Appl. 2, 22.)

Labor Impacts. Applicants state that CMQR US currently employs 94 people in Maine, Vermont, and Ohio. (*Id.* at 15.) Applicants state that no current CP employees in the United States would be adversely affected by the Transaction. (*Id.*)

Applicants state that any employees adversely impacted by the Transaction would be entitled to labor protective conditions in accordance with *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60, *aff'd New York Dock Railway* v. *United States,* 609 F.2d 83 (2d Cir. 1979), as modified by *Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc.,* 6 I.C.C. 2d 799, 814–26 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC,* 930 F.2d 511 (6th Cir. 1991). (Appl. 15.)

Primary Application and Related Filings Accepted. The Board finds that the proposed Transaction would be a ''minor transaction'' under 49 CFR 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR pt. 1180. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board's treatment differs depending upon whether the transaction would have ''regional or national transportation significance.'' 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as ''minor''—and thus not having regional or national transportation significance—if a determination can be made that either: (1) The transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as ''significant'' if neither of these determinations can be made.

Nothing in the record thus far suggests that the Transaction would have anticompetitive effects. The Transaction is an end-to-end acquisition involving approximately 301.45 miles of rail line in Vermont and Maine. As Applicants note, the Board has held that end-to-end transactions are unlikely to raise competitive concerns. (Appl. 5); *see Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC,* FD 35147 et al., slip op. at 5 (STB served Mar. 10, 2009). The application indicates that the Transaction would not result in any two-to-one shippers. (Appl. 13.)

Moreover, if anticompetitive effects resulting from the Transaction should later be shown to be likely, they would appear, from the face of the application, to be clearly outweighed by the Transaction's contribution to the public interest in meeting significant transportation needs. As noted in the application, the Transaction would result in more efficient movement of existing and future interline traffic between CMQR and CP, thus reducing costs. (*Id.* at 4, 9–10.) Moreover, according to Applicants, the Transaction would benefit shippers by opening new markets, including import and export markets served by the Atlantic deep-water ports of Searsport, Me., and Saint John, N.B. (*Id.* at 9.) Applicants' intention to ensure that CMQR US will have access to capital and other resources needed to grow and operate safely and efficiently would also be beneficial. (*Id.* at 11.)

Therefore, based on the information provided in the application, the Board finds the proposed Transaction to be a minor transaction under 49 CFR 1180.2(c). Such a categorization does not mean that the proposed Transaction is insignificant or not of importance. Indeed, after the record in the proceeding is fully developed, the Board will carefully review the proposed Transaction to make certain that it does not substantially lessen competition, create a monopoly, or restrain trade, and that any anticompetitive effects are outweighed by the public interest. *See* 49 U.S.C. 11324(d)(1)–(2). The Board may also impose conditions to mitigate or eliminate any anticompetitive impacts of the transaction.

Procedural Schedule. The Board has considered Applicants' motion for a procedural schedule, filed December 17, 2019.[4] Applicants' proposed procedural schedule provides 33 days for comments from all parties on the application and 30 days for the concurrent filing of replies to comments and rebuttal in support of the

[3] On December 30, 2019, Applicants filed a letter confirming the consummation of the Transaction. The letter also stated that all of the outstanding common stock of CMQR US was deposited in an independent voting trust pending the Board's decision on the application. (Soo Line Corp. Ltr. 1, Dec. 30, 2019 (citing 49 CFR 1013.3).)

[4] Applicants provide for 31 days from the filing of the application to the publication of this notice. The Board, however, is required to publish this notice within 30 days of the filing of the application. 49 U.S.C. 11325(a).

application. Applicants' proposed procedural schedule then provides 54 days after the close of the evidentiary period for the Board to issue its final decision. The Board will adopt a procedural schedule that will allow 33 days for comments on the application and 31 days for replies to comments and rebuttal in support of the application. The Board is required to issue ''a final decision by the 45th day after the date on which it concludes the evidentiary proceedings,'' 49 U.S.C. 11325(d)(2), and will do so here.[5]

For further information regarding procedural dates, see the Appendix (Procedural Schedule) to this decision.

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than February 4, 2020, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Applicants' representatives.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a ''Non-Party.'' Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after February 4, 2020, as practicable, a notice containing the official service list (the service list notice). Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of the service list notice must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at *www.stb.gov.*

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at *www.stb.gov.*[6] In addition, the application may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.

3. This decision is effective on January 16, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Decided: January 10, 2020.

Brendetta Jones,

Clearance Clerk.

Procedural Schedule

November 26, 2019 Motion for Protective Order filed.

December 17, 2019 Application and Motion for Establishment of Procedural Schedule filed.

January 16, 2020 Board notice of acceptance of application served and published in the **Federal Register**.

February 4, 2020 Notices of intent to participate in this proceeding due.

February 18, 2020 All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.

March 20, 2020 Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the application due.

May 4, 2020 Date by which a final decision will be served.

June 3, 2020[7] Date by which a final decision will become effective.

[FR Doc. 2020–00625 Filed 1–15–20; 8:45 am]

BILLING CODE 4915–01–P

[5] This notice will be published in the **Federal Register** on January 16, 2020; all subsequent deadlines will be calculated from this date. Deadlines for filings are calculated in accordance with 49 CFR 1104.7(a).

[6] Applicants have submitted a public version and highly confidential version of their application. The public version is available on the Board's website. The highly confidential version may be obtained subject to the provisions of the protective order issued by the Board on December 3, 2019.

[7] The final decision will become effective 30 days after it is served.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0898]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Representatives of the Administrator

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves contact information along with the education and experience of a person seeking to be appointed as an FAA Designated Engineering Representative (DER). The information to be collected will be used to determine the eligibility and qualifications of the DER applicant.

DATES: Written comments should be submitted by February 18, 2020.

ADDRESSES: Interested persons are invited to 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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Scott Geddie by email at: *Scott.Geddie@faa.gov,* phone: 405–954–6897

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0033.

Title: Renewal of an information collection.

Form Numbers: FAA Form 8110–14.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 7, 2018 (84 FR 60136). Information in this collection is voluntarily submitted by persons applying to become an FAA Designated Engineering Representative (DER). DERs represent the FAA on aircraft certification projects. They examine engineering design data and determining whether aircraft built according to that data comply with published FAA airworthiness standards. Collecting this information allows the FAA to evaluate the eligibility and qualifications of the DER applicant.

This application form, 8110–14, Statement of Qualifications, provides the FAA with contact information for the applicant, along with the applicant's requested authorities. It outlines the applicant's education and pertinent experience that, in conjunction with additional narratives and other detailed information, allows the FAA to make an informed decision whether to appoint the applicant as an FAA representative.

Respondents: Persons applying to become an FAA Designated Engineering Representative.

Frequency: One time submittal.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: One time submittal. No annual burden.

Issued in Washington, DC.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2020–00597 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2020–03]

Petition for Exemption; Summary of Petition Received; Greenpoint Technologies, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 5, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0941 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 (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael H. Harrison, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3368, email *Michael.Harrison@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on January 10, 2020.

Mary A. Schooley,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2019–0941.

Petitioner: Greenpoint Technologies, Inc.

Section(s) of 14 CFR Affected: §§ 25.785(h)(2), 25.785(j), 25.791(a), 25.795(b)(2), 25.795(c)(1), 25.795(c)(3)(ii), 25.795(c)(3)(iii), 25.813(e), 25.853(d).

Special Conditions Affected: 25–370–SC.

Exceptions Affected: Type Certificate Data Sheet T00021SE (Additional Design Requirements and Conditions; Security Considerations.).

Description of Relief Sought: Greenpoint Technologies, Inc., is seeking relief from the listed design requirements in order to support a supplemental type certificate (STC) application for a Boeing Model 787–9 airplane. The proposed STC is for the installation of an executive-style interior with multiple rooms.

[FR Doc. 2020–00561 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–81]

Petition for Exemption; Summary of Petition Received; James Ivey

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 5, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0999 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: Keira Jones, (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 13, 2020.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0999.

Petitioner: James Ivey.

Section(s) of 14 CFR Affected: § 91.225(f).

Description of Relief Sought: James Ivey seeks relief from § 91.225(f) to allow the installation and practical operation of a battery-powered Automatic Dependent Surveillance—Broadcast (ADS–B) system in an aircraft that was not originally certificated with an electrical system, or that has not subsequently been certified with such a system installed, by allowing the ADS–B system to be turned off upon entering uncontrolled airspace. This would add a capability of operating the aircraft with the ADS–B turned off, similar to the existing process allowed for transponders under 14 CFR 91.215(c).

[FR Doc. 2020–00660 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0012]

Deepwater Port License Application: Texas COLT LLC; Correction

AGENCY: Maritime Administration, DOT.

ACTION: Correcting amendments.

SUMMARY: On December 30, 2019, the Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announced the cancellation of all actions related to the processing of a license application for the proposed Texas COLT LLC deepwater port including cancellation of all activities related to the preparation of an Environmental Impact Statement that was announced on Friday, March 8, 2019, in **Federal Register** Volume 84 Number 46 (Notice of Intent; Notice of Public Meeting; Request for Comments). The document inadvertently described the proposed Texas COLT LLC deepwater port as a liquified natural gas deepwater port facility. This document corrects the previous notice by describing the Texas COLT LLC deepwater port as an oil deepwater port facility.

DATES: Applicable on January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Smith, USCG, telephone: 202–372–1413, email: *Ken.A.Smith@uscg.mil*; or Mr. Linden Houston, MARAD, telephone: 202–366–4839, email: *Linden.Houston@dot.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2019–28137 appearing on page 72129 in the **Federal Register** on Monday, December 30, 2019, the following corrections are made:

1. On page 72130, under **SUPPLEMENTARY INFORMATION:** On December 10, 2019, MARAD received notification from the applicant of the withdrawal of its application to own, construct, and operate a deepwater port for a liquefied natural gas deepwater port facility, located approximately 27.8 nautical miles off the coast of Brazoria County, Texas in a water depth of approximately 110 feet and connected to existing offshore pipelines.'' is corrected to read **SUPPLEMENTARY INFORMATION:** On December 10, 2019, MARAD received notification from the applicant of the withdrawal of its application to own, construct, and operate a deepwater port for an oil deepwater port facility, located approximately 27.8 nautical miles off the coast of Brazoria County, Texas in a water depth of approximately 110 feet and connected to existing offshore pipelines.''

* * * * *

Dated: January 13, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00615 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials; Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel,

4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 31, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 09, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14175–M	Praxair, Inc	180.209(b)(1)(iii), 180.209(b)(1)(iv).	To modify the special permit to clarify what is a package and what is a packaging and to authorize a 10-year retest interval for individual DOT specification 3A or 3AA cylinders, not exceeding 125 pounds water capacity configured into bundles. (modes 1, 2, 3, 4).
14994–M	Auto Chlor System Ltd	173.28(b)(4)(i)	To modify the special permit to authorize an additional hazardous material. (mode 1).
15279–M	University Of Colorado At Boulder, Ehs.	172.301(a), 172.301(b), 172.301(c), 173.196(a), 173.196(b), 178.609.	To modify the special permit to authorize new destinations due to lab increasing in size and moving. (mode 1).
16274–M	Matheson Tri-gas, Inc	173.13(c)(2)(i), 173.13(c)(2)(ii), 173.13(c)(2)(iii).	To modify the special permit to clarify placarding requirements and ICAO Technical Instructions. (modes 1, 4).
20858–M	Cryoconcepts, Lp	173.304a(a)(1), 173.306(a)	To modify the special permit to clarify the maximum fill density of compressed gas in the cylinders. (modes 1, 2, 3).

[FR Doc. 2020–00605 Filed 1–15–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0221 (Notice No. 2019–12)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on four Office of Management and Budget (OMB) control numbers pertaining to hazardous materials transportation. PHMSA intends to request renewal for these four control numbers from OMB.

DATES: Interested persons are invited to submit comments on or before March 16, 2020.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA–2019–0221 (Notice No. 2019–12) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA–2019–0221) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Requests for a copy of an information collection should be directed to Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

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.*

Confidential Business Info: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly

designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Steven Andrews or Shelby Geller, Standards and Rulemaking Division and addressed to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for each information collection activity and will publish a notice in the **Federal Register** alerting the public upon OMB's approval.

PHMSA requests comments on the following information collections:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests, and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the HMR. It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use. Additionally, it is used to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials. The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Design Qualification Testing for IBCs—Applications for the Certification Mark	13	494	3	1,482
Periodic Design Requalification Testing of IBCs—Submission of Changes to Test Frequency to the Associate Administrator	13	494	3	1,482
Applications for Approval of Equivalent Packaging—IBCs	5	5	3	15
Reporting Requirements for Retest and Inspection of IBCs	1,000	100,000	0.25	25,000
Recordkeeping for IBC Testing	150	150	0.25	38
Manufacturers Data Report (ASME) for Portable Tanks	50	50,000	0.25	12,500
Approval Applications for Specification UN Portable Tank Design	13	494	3	1,482
Applications for Modifications to Portable Tank Designs	13	494	3	1,482
Portable Tanks—Approval Agency Retention of Documents	13	494	0.25	124
Portable Tanks—Manufacturers Retention of Documents	50	50,000	0.25	12,500
Recordkeeping for the Testing of Portable Tanks	150	150	0.25	38

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,470.

Total Annual Responses: 202,775.

Total Annual Burden Hours: 56,142.

Frequency of Collection: On occasion.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of an incident as prescribed in 49 CFR 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a main artery. Incidents meeting criteria in 49 CFR 171.15 also require a telephonic report. This information collection enhances the Agency's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway. The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Telephone Notifications	733	733	0.08	58
Incident Reports Paper—Written	803	3,420	1.6	5,473
Incident Reports—Electronic	803	16,737	0.8	13,390

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 2,339.

Total Annual Responses: 20,890.

Total Annual Burden Hours: 18,921.

Frequency of Collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of certain DOT specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector.

The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Marking New/Repaired Hoses with Unique Identifier	6,800	12,172	0.083	1,010
Monthly Hose Inspections Record	6,800	439,960	0.1	43,996
Record of Monthly Piping Tests Record	6,800	400,112	0.2	80,022
Hose Pressure Test Marking Record	6,800	12,172	0.083	1,010
Annual Hose Test Record	6,800	36,652	0.42	15,393
Cargo Tanks in Other Than Metered Delivery Service—Design Certification for Automatic Shutoff	150	900	8	7,200
Cargo Tanks in Other Than Metered Delivery Service—Instillation of Shutoff System by a Registered Inspector	150	900	8	7,200
Cargo Tank Motor Vehicles in Metered Delivery Service—Certification of Remote Control Equipment by a Registered Inspector	150	3,300	8	26,400

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,950.

Total Annual Responses: 906,168.

Total Annual Burden Hours: 182,232.

Frequency of Collection: On occasion.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden results from the requirements pertaining to the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in 49 CFR part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every 5 years in order to ensure they are properly working as specified in 49 CFR 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every 5 years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with 49 CFR 180.415(b) and 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Annual Visual Inspection	250	250	0.5	125
Hydrostatic Pressure Test (Every 5 Years)	250	250	0.2	50

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 250.

Total Annual Responses: 500.

Total Annual Burden Hours: 175.

Frequency of Collection: On occasion.

Issued in Washington, DC, on January 13, 2020.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–00651 Filed 1–15–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before February 18, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 09, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA—Granted			
12440–M	Luxfer Inc	173.301(a)(1), 173.302(a), 173.304(a), 180.205(a).	To modify the special permit to authorize an additional Division 2.2 hazmat.
12516–M	Poly-coat Systems, Inc	107.503(b), 107.503(c), 173.241, 173.242.	To modify the special permit to remove the requirement that the special permit number be shown on shipping papers.
15389–M	Ametek Ameron, Llc	173.301(a)(1), 173.302(f)(1), 173.302(f)(2), 173.302a(a)(1), 173.304(f)(1), 173.304(f)(2), 173.304a(a)(1).	To modify the special permit to authorize an alternative means of performing cylinder lot acceptance testing.
16524–M	Quantum Fuel Systems Llc	173.302(a)	To modify the special permit to authorize a lighter class of tow vehicle.
20493–M	Tesla, Inc	172.101(j)	To modify the special permit to authorize the transportation in commerce of non-wired battery modules.
20499–M	Inmar Rx Solutions, Inc		To modify the special permit to change it from an MMS to an offer type permit.
20534–N	Energy Transport Solutions Llc	172.101(i)(3)	To authorize the transportation in commerce of methane, refrigerated liquid in DOT specification 113C120W tank cars.
20913–N	Tiveni Gmbh	173.185(a)	To authorize the transportation in commerce of prototype lithium ion batteries by cargo-only aircraft.
20976–N	The National Reconnaissance Office.	173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment (a spacecraft).
20980–N	Clean Harbors, Inc	178.345–8(c)(1), 178.345–8(c)(2).	To authorize the transportation in commerce of a non-DOT specification tanker with a suspect valve.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA—Denied			
14298–M	Versum Materials, Llc	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize the addition of tungsten hexafluoride as an authorized hazardous material.
20892–N	Natural Choice Corporation	172.200, 172.300, 172.500, 172.400.	To authorize the transportation in commerce of DOT 3AL cylinders containing carbon dioxide with alternate hazard communication.
20936–N	Co2 Exchange Llc	171.2(k)	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication.
20944–N	Linde Gas North America Llc	173.304a(a)	To authorize the transportation in commerce of non-DOT specification cylinders.
20947–N	Tmk Technics Corporation	171.2(k), 172.200, 172.400, 172.700(a).	To authorize the transportation in commerce of certain DOT 3AL, cylinders that contain carbon dioxide, with alternative hazard communication. Additionally, cylinders with a gauge pressure less than 200 kPa (29.0 psig/43.8 psia) at 20 °C (68 °F) are authorized to be transported as a hazardous material under the conditions of this special permit.
20950–N	Zhejiang Chumboon Iron-printing& Tin-making Co., ltd.	173.304(d)	This special permit authorizes the manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container.
SPECIAL PERMITS DATA—Withdrawn			
20918–N	Salco Products Inc	172.704, 179.7	To authorize the use of packaging components that have been manufactured by entity that has not obtained its AAR facility certification.
20970–N	Union Tank Car Company	172.203(a), 172.302(c), 173.247(a).	To authorize the transportation in commerce of DOT 117 tank cars containing elevated temperature materials.
20982–N	Ford Motor Company	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg aboard cargo-only aircraft.

[FR Doc. 2020–00606 Filed 1–15–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials; Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 18, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 09, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application Number	Applicant	Regulation(s) affected	Nature of the special permits thereof
20985–N	Fetch Robotics Inc	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
20986–N	Olin Corporation	172.302(c), 173.26, 173.314(c), 179.13(b).	To authorize the transportation in commerce of tank cars containing chlorine in quantities exceeding those authorized in the HMR. (mode 2).

SPECIAL PERMITS DATA—Continued

Application Number	Applicant	Regulation(s) affected	Nature of the special permits thereof
20988–N	I-k-i Manufacturing Co., Inc	173.306(a)(5)	To authorize the transportation in commerce of inner receptacles containing flammable gas that are eligible for the limited quantity exception in 49 CFR 173.306(a)(5). (modes 1, 2, 3, 4, 5).
20990–N	Psc Custom Lp	172.101(i)(3)	To authorize the transportation in commerce of methane gas in nurse tanks. (mode 1).
20991–N	Veolia ES Technical Solutions LLC.	173.51, 173.54(a), 173.56(b), 173.21(b).	To authorize the one-time, one-way transportation of unapproved cartridges for tools for the purpose of disposal. (mode 1).
20992–N	Daicel Safety Systems Americas, Inc.	173.302a(a)(1), 178.65(c)(3) ...	To authorize the manufacture, marking, sale, and use of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems. These pressure vessels may be charged with non-toxic, non-liquefied gases or mixtures thereof. (modes 1, 2, 3, 4, 5).

[FR Doc. 2020–00604 Filed 1–15–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

SUB-AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On January 13, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals:

1. NORIEGA FIGUEROA, Jose Gregorio, Sucre, Venezuela; DOB 21 Feb 1969; Gender Male; Cedula No. V–8348784 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692 of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,'' 80 FR 12747, 3 CFR, 2015 Comp., p. 276 (E.O. 13692), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela,'' 84 FR 509 (E.O. 13857), for being a current or former official of the Government of Venezuela.

2. PARRA RIVERO, Luis Eduardo, Yaracuy, Venezuela; DOB 07 Jul 1978; Gender Male; Cedula No. V–14211633 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

3. BRITO RODRIGUEZ, Jose Dionisio, Anzoategui, Venezuela; DOB 15 Jan 1972; Gender Male; Cedula No. V–8263861 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

4. DUARTE, Franklyn Leonardo, Tachira, Venezuela; DOB 15 May 1977; Gender Male; Cedula No. V–13304045 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

5. MORALES LLOVERA, Negal Manuel, Miranda, Venezuela; DOB 08 Mar 1972; Gender Male; Cedula No. V–9670642 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

6. PEREZ LINARES, Conrado Antonio, Trujillo, Venezuela; DOB 24 May 1982; Gender Male; Cedula No. V–15584063 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

7. SUPERLANO, Adolfo Ramon, Barinas, Venezuela; DOB 07 Jun 1954; Gender Male; Cedula No. V–4262374 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

Dated: January 13, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–00613 Filed 1–15–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for date sanctions become effective.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global

Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, or; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On January 10, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. REZA'I, Mohsen (a.k.a. REZAEI, Mohsen; a.k.a. REZAI, Mohsen), Iran; DOB 1954; POB Masjed-e Soleyman, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

2. QOMI, Mohsen, Iran; DOB 1960; POB Mamazand, Varamin, Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(D) of Executive Order 13876, 84 FR 30576, June 24, 2019, for having acted or purported to act for or on behalf of, directly or indirectly, the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

3. NAQDI, Mohammad Reza (a.k.a. NAGHDI, Mohammad Reza; a.k.a. NAGHDI, Mohammedreza; a.k.a. NAQDI, Gholamreza; a.k.a. NAQDI, Gholam-reza; a.k.a. NAQDI, Mohammad-Reza; a.k.a. NAQDI, Muhammad; a.k.a. SHAMS, Mohammad Reza), Iran; DOB 1951 to 1953; alt. DOB 1960 to 1962; alt. DOB Apr 1961; alt. DOB 1953; POB Najaf, Iraq; alt. POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Brigadier General and Commander of the IRGC Basij Resistance Force; President of the Organization of the Basij of the Oppressed; Chief of the Mobilization of the Oppressed Organization; Head of the Basij (individual) [SDGT] [NPWMD] [IRGC] [IFSR] [IRAN–HR] [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

4. SOLEIMANI, Gholamreza (a.k.a. SOLEIMANI, Gholam Reza; a.k.a. SOLEYMANI, Gholam Reza), Iran; DOB 1964; alt. DOB 1965; POB Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

5. ASHTIANI, Mohammad-Reza (a.k.a. ASHTIANI, Mohammed Reza Gharayi), Iran; DOB 1960; alt. DOB 1961; POB Tehran, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

6. ABDOLLAHI, Ali (a.k.a. ABDOLLAHI ALIABADI, Ali), Iran; DOB 1959; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

7. MIR-HEJAZI, Asghar (a.k.a. HEJAZI, Ali Asghar; a.k.a. HEJAZI, Asghar; a.k.a. HEJAZI, Asghar Sadegh; a.k.a. HEJAZI, Seyyed Ali Asghar; a.k.a. MIR-HEJAZI RUHANI, Ali Asqar; a.k.a. MIRHEJAZI, Ali; a.k.a. MIR-HEJAZI, Ali Asqar), Iran; DOB 08 Sep 1946; POB Esfahan, Iran; nationality Iran; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Security Deputy of Supreme Leader; Member of the Leader's Planning Chamber; Head of Security of Supreme Leader's Office; Deputy Chief of Staff of the Supreme Leader's Office (individual) [IRAN–HR] [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(D) of Executive Order 13876, 84 FR 30576, June 24, 2019, for having acted or purported to act for or on behalf of, directly or indirectly, the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

8. SHAMKHANI, Ali, Iran; DOB 29 Sep 1955; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Admiral (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13876, 84 FR 30576, June 24, 2019, for being a person appointed to a position as a state official of Iran by the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

Entities

1. ESFAHAN'S MOBARAKEH STEEL COMPANY (a.k.a. ESFAHAN'S MOBARAKEH STEEL PUBLIC JOINT STOCK COMPANY), P.O. Box 161–84815, Mobarakeh, Esfahan 11131–84881, Iran; Mobarakeh Steel Company, Sa'adat Abad St., Azadi SQ., Esfahan, Esfahan, Iran; Mobarakeh Steel Company, No. 2, Gol Azin Alley, Kouhestan St., Ketah SQ., Sa'adat Abad, Tehran, Iran; website *www.en.msc.ir;* Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 10260289464 (Iran); Commercial Registry Number 411175869887 (Iran) [SDGT] [IFSR] [IRAN–EO13871] (Linked To: MEHR-E EQTESAD-E IRANIAN INVESTMENT COMPANY).

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

2. SABA STEEL (a.k.a. SABA STEEL COMPANY), KM 45 on Esfahan Shahrekord Road, Isfahan, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 5028 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

3. HORMOZGAN STEEL COMPANY (a.k.a. ''HOSCO''), Shahid Rejaei Port Road KM 13, Bandar Abbas, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

4. IRAN ALUMINUM COMPANY (a.k.a. IRAN ALUMINIUM COMPANY; a.k.a. IRANIAN ALUMINUM COMPANY; a.k.a. IRAN'S ALUMINUM COMPANY; a.k.a. ''IRALCO''), No. 49 Mullah Sadra Street, Vanaq Square, After Kurdistan Crossroads, Tehran, Iran; P.O. Box 3, Arak, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Registration ID 2600 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

5. KHALAGH TADBIR PARS CO., No. 18, Azadegan Alley, Qaem Maqam-e-Farahani St., Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

6. PAMCHEL TRADING BEIJING CO. LTD. (a.k.a. PAMCHEL ASIA CO., LTD; a.k.a. PAMCHEL ASIA STEEL GROUP COMPANY LIMITED), Room 328 Building 28, No. 17 Jianguomenwai Street Chaoyang District, Beijing, China; Rm. 503, Building No. 4, Xiandaicheng District, Beijing, China; Flat/Rm A, 9/F Silvercorp International Tower, 707–713 Nathan Road, Mongkok, Kowloon, Hong Kong; Additional Sanctions Information—Subject to Secondary Sanctions

[IFCA] [IRAN–EO13871] (Linked To: KHALAGH TADBIR PARS CO.).

Designated pursuant to section 1(a)(iii) of Executive Order 13871, 84 FR 20761, May 10, 2019, for having knowingly engaged, on or after the date of this order, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran.

Designated pursuant to section 1(a)(iv) of Executive Order 13871, 84 FR 20761, May 10, 2019, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of PLACEHOLDER, a person whose property and interests in property are blocked pursuant to E.O. 13871.

7. POWER ANCHOR LIMITED, Mahe, Seychelles; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871] (Linked To: PAMCHEL TRADING BEIJING CO. LTD.).

Designated pursuant to section 1(a)(v) of Executive Order 13871, 84 FR 20761, May 10, 2019, for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, PAMCHEL TRADING BEIJING CO. LTD., a person whose property and interests in property are blocked pursuant to E.O. 13871.

8. HONGYUAN MARINE CO LTD (a.k.a. HONGYUAN MARINE CO LTD HONG UNION), Room 905, China Hong Centre, 717, Zhongxing Lu, Jiangdong Qu, Ningbo, Zhejiang 315040, China; R1003–1008, Heyuan Enterprise Square, 2993 Gonghexin Rd, Shanghai 315040, China; website *http://www.hong-union.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Identification Number IMO 5163651 [IRAN–EO13871].

Designated pursuant to section 1(a)(iii) of Executive Order 13871, 84 FR 20761, May 10, 2019, for having knowingly engaged, on or after the date of this order, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran.

9. SOUTH KAVEH STEEL COMPANY (a.k.a. KISH SOUTH KAVEH STEEL COMPANY; a.k.a. SKS STEEL COMPANY; a.k.a. ''SKS CO.''), No. 1/2 Seventh Ave., North Falamak-zarafshan intersections, Phase 4, Shahrak-E Gharb, Tehran, Iran; Persian Gulf Special Economic Zone, 13th Km Shahid Rajaee Highway, Bandar Abbas, Hormozgan, Iran; Next to Behjat Park, No. 12, Apartment Complex Kaveh Golabi Stre, Karimkhan Zand Avenue, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 7103 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

10. OXIN STEEL COMPANY (a.k.a. KHOUZESTAN OXIN STEEL COMPANY; a.k.a. KHOZESTAN OXIN STEEL COMPANY; a.k.a. KHUZESTAN OXIN STEEL COMPANY), Bandar Imam Khomeini (Blk) Road, 10 KM, Ahvaz 61788–13111, Iran; website *www.oxinsteel.ir;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 248247 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

11. ESFAHAN STEEL COMPANY (a.k.a. ''ECSO''), End of Zob Ahan Highway-Esfahan Steel Company 8593111111, Iran; Townhid building, end of Zob Ahan Highway No. 178, Saadi Boulevard, The Steel Highway, Esfahan 81756–14461, Iran; PO Box 81756–14461, No. 178 Saadi Boulevard, Esfahan, Iran; website *http://www.esfahansteel.ir;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 25230 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

12. KHORASAN STEEL COMPANY (a.k.a. KHORASAN STEEL COMPLEX JOINT STOCK COMPANY), PO Box 91735–866, 27, Felestine Boulevard, Mashhad, Iran; website *www.khorasansteel.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 6581 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

13. ARFA IRON AND STEEL COMPANY (a.k.a. ARFA IRON & STEEL COMPANY; a.k.a. ARFA STEEL), No. 4, 4th Floor, Iraj Allay, Nelson Mandela (Africa) Street, Tehran, Iran; 25 km into the Ardakan-Nain Road, Ardakan, Iran; website *www.arfasteel.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 242295 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

14. IRAN ALLOY STEEL COMPANY (a.k.a. ''IASCO''), No. 51 Mashahir Ave., Ghaem Magham Farhani St., Karimkhan St., Tehran, Iran; Azadegan Blvd., Martyr Dehghan Manshadi Blvd., Km 24, IASCO Road, Yazd, Iran; website *www.iasco.ir;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 2220 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

15. KHOUZESTAN STEEL COMPANY (a.k.a. KHUZESTAN STEEL COMPANY), 10th Km. of Ahwaz-Bahdar Imam Khomeini Road, Ahwaz, Iran; PO Box 1378, Ahvaz, Khuzestan 61788–13111, Iran; website *www.ksc.ir;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 3199 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

16. ALMAHDI ALUMINUM CO. (a.k.a. AL MAHDI ALUMINUM COMPANY), 1st Floor, No. 12, Bibie Shahrbanoei Ally., West Saeb Tabrizi St., North Sheikh Bahaei St., Molla Sadra St., Vanak Sq., Tehran, Iran; 18th Km., Shahid Rajaee Quay Road, Bandar Abbas, Iran; website *http://almahdi.ir;* Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

17. NATIONAL IRANIAN COPPER INDUSTRIES COMPANY (a.k.a. NATIONAL IRANIAN COPPER INDUSTRIES PUBLIC JOINT STOCK; a.k.a. ''NICICO''), Next to Saei Park, Block No. 2161, Vali Asr Avenue, Tehran, Iran; PO Box 15115–416, Tehran, Iran; website *www.nicico.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 15957 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

18. GOLGOHAR MINING AND INDUSTRIAL COMPANY, No. 273, Dr. Fatemi Ave., Tehran 1414618551, Iran; 55 km, Shiraz Road, Sirjan, Kerman, Iran; PO Box 178185–111, Sirjan, Kerman, Iran; website *www.geg.ir;* Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

19. IRANIAN GHADIR IRON & STEEL CO. (a.k.a. IRANIAN GHADIR IRON AND STEEL CO.; a.k.a. ''IGISCO''), 25th Km. Aradakan, Naein Road, Yazd, Iran; No. 1 34th Alley, Valiasr St., After Saei Park, Tehran, Iran; website *www.igisco.com;* Additional Sanctions Information—Subject to Secondary Sanctions [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

20. REPUTABLE TRADING SOURCE LLC (a.k.a. REPUTABLE TRADING SOURCE LLC COMPANY; a.k.a. ''RTS LLC''), CR Number 1137785, PO Box: 888, Muscat 111, Oman; PO Box 1295: 111 CPO, Azaiba, Muscat, Oman; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 1137785 (Oman) [IRAN–EO13871] (Linked To: KHOUZESTAN STEEL COMPANY).

Designated pursuant to section 1(a)(v) of Executive Order 13871, 84 FR 20761, May 10, 2019, for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, KHOUZESTAN STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

21. CHADORMALU MINING & INDUSTRIAL COMPANY (a.k.a. CHADORMALU MINING & INDUSTRIAL CO.; a.k.a. CHADORMALU MINING & INDUSTRIAL PUBLIC JOINT STOCK COMPANY; a.k.a. CHADORMALU MINING AND INDUSTRIAL CO.; a.k.a.

CHADORMALU MINING AND INDUSTRIAL COMPANY; a.k.a. CHADORMALU MINING AND INDUSTRIAL PUBLIC JOINT STOCK COMPANY), 56, Vali-e-Asr Street, Opposite the Prayer, Esfandyar Boulevard, Tehran 1968653647, Iran; website *www.chadormalu.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Registration Number 145857 (Iran) [IRAN–EO13871].

Designated pursuant to section 1(a)(i) of Executive Order 13871, 84 FR 20761, May 10, 2019, for operating in the iron, steel, aluminum, or copper sector of Iran.

Vessel

1. HONG XUN (D5GG9) Liberia flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9588885; MMSI 636016459 (vessel) [IRAN–EO13871] (Linked To: HONGYUAN MARINE CO LTD).

Identified pursuant to E.O. 13871 as property in which HONGYUAN MARINE CO LTD, an entity whose property and interest in property are blocked pursuant to E.O. 13871, has an interest.

Dated: January 10, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–00596 Filed 1–15–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Agency Information Collection Activity: Statement of Purchaser or Owner Assuming Seller's Loan

AGENCY: Veterans Benefits Administration; Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be submitted on or before February 18, 2020.

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 sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0111'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0111'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Statement of Purchaser or Owner Assuming Seller's Loan, 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Extension without change of a currently approved collection.

Abstract: Under Title 38, U.S.C., section 3702, authorizes collection of this information to help determine the release of liability and substitution of entitlement. 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.

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 30-day comment period soliciting comments on this collection of information was published on [84 FR, at page 56020].

Affected Public: Individuals or Households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Enterprise Records Service (ERS), Department of Veterans Affairs.

[FR Doc. 2020–00585 Filed 1–15–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Thursday,
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Part II

Department of Labor

Wage and Hour Division

29 CFR Part 791

Joint Employer Status Under the Fair Labor Standards Act; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

RIN 1235–AA26

Joint Employer Status Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (the Department) is updating and revising the Department's interpretation of joint employer status under the Fair Labor Standards Act (FLSA or Act) in order to promote certainty for employers and employees, reduce litigation, promote greater uniformity among court decisions, and encourage innovation in the economy.

DATES: This final rule is effective March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FLSA requires covered employers to pay their employees at least the federal minimum wage for every hour worked and overtime for every hour worked over 40 in a workweek.[1] To be liable for paying minimum wage or overtime, a person or entity must be an ''employer,'' which the FLSA defines in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [2]

As the Department has recognized since the FLSA's enactment, an employee can have two or more employers who are jointly and severally liable for the wages due the employee (*i.e.,* joint employers). In 1958, the Department published an interpretive regulation, codified in 29 CFR part 791, which explained that joint employer status depends on whether multiple persons are ''not completely disassociated'' or ''acting entirely independently of each other'' with respect to the employee's employment.[3] The regulation provided three situations where two or more employers are generally considered joint employers: Where there is an arrangement between them to share the employee's services, as, for example, to interchange employees; where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or where they are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[4] Until this final rule, the Department had not meaningfully revised part 791 since its promulgation over 60 years ago.

The Department is concerned that part 791 does not provide adequate guidance for the most common joint employer scenario under the Act—where an employer suffers, permits, or otherwise employs an employee to work, and another person simultaneously benefits from that work. Part 791's focus on the association or relationship between potential joint employers is not necessarily helpful in determining whether the other person benefitting from the employee's work is the employee's employer too, especially considering the text of section 3(d) and Supreme Court and circuit court precedent determining joint employer status based on the degree of control exercised by the potential joint employer over the employee.

Accordingly, in April, the Department published a Notice of Proposed Rulemaking (NPRM) detailing this concern, explaining how section 3(d) provides the textual basis for determining joint employer status under the Act, proposing a four-factor balancing test for determining joint employer status in the scenario where another person benefits from an employee's work, and proposing additional guidance regarding how to apply the test.[5] In addition, the NPRM recognized that part 791's focus on the association between the potential joint employers is useful for determining joint employer status in a second scenario—where multiple employers suffer, permit, or otherwise employ an employee to work separate sets of hours in the same workweek and the issue is whether those separate sets of hours should be aggregated in the workweek. The Department proposed that the multiple employers are joint employers in this scenario if they are sufficiently associated with respect to the employment of the employee. Finally, the NPRM provided illustrative examples describing how the Department's proposal would apply in a number of factual scenarios involving multiple employers.

Having received and reviewed the comments to its proposal, the Department now adopts as a final rule the analyses set forth in the NPRM largely as proposed. In the joint employer scenario where another person is benefitting from the employee's work, the Department is adopting a four-factor balancing test derived from *Bonnette* v. *California Health & Welfare Agency*[6] to assess whether the other person: (1) Hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records. No single factor is dispositive in determining joint employer status, and the appropriate weight to give each factor will vary depending on the circumstances. However, satisfaction of the maintenance of employment records factor alone does not demonstrate joint employer status.

The Department believes that this test is consistent with the ''any person acting directly or indirectly in the interest of an employer in relation to an employee'' language in the Act's definition of ''employer.'' That language alone provides the textual basis for determining joint employer status under the Act. Although section 3(e) (defining ''employee'') [7] and section 3(g) (defining ''employ'' as including ''to suffer or

[1] *See* 29 U.S.C. 206(a), 207(a).

[2] 29 U.S.C. 203(d).

[3] *See* 23 FR 5905 (Aug. 5, 1958) and 29 CFR 791.2(a).

[4] *See* 29 CFR 791.2(b).

[5] *See* 84 FR 14043 (Apr. 9, 2019).

[6] 704 F.2d 1465 (9th Cir. 1983).

[7] 29 U.S.C. 203(e)(1).

permit to work'') [8] broadly define who is an employee under the Act, only section 3(d) addresses whether a worker who is an employee under the Act has another employer for his or her work. Moreover, multiple circuit courts apply balancing tests that, similar to the Department's test, assess the potential joint employer's control over the employee.

The Department's final rule provides additional guidance on how to apply this test. For example, to be a joint employer under the Act, the other person must actually exercise—directly or indirectly—one or more of the four control factors. The other person's ability, power, or reserved right to act in relation to the employee may be relevant for determining joint employer status, but such ability, power, or right alone does not demonstrate joint employer status without some actual exercise of control. The Department had proposed that the reserved right to act be irrelevant for determining joint employer status, but having reviewed and considered the comments received, it now recognizes that the reserved right to act can play some role in determining joint employer status, though there still must be some actual exercise of control. The Department's final rule also provides, in response to comments received, guidance on the meaning of ''employment records'' for purposes of applying the fourth factor and on what constitutes indirect acts of control for purposes of applying the factors generally.

Application of the four factors should determine joint employer status in most cases. Nonetheless, the Department recognizes, consistent with longstanding precedent, that additional factors may be relevant for determining joint employer status. Accordingly, the final rule provides that additional factors may be considered, but only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee's work. In addition, the final rule provides that whether the employee is economically dependent on the potential joint employer is not relevant for determining the potential joint employer's liability under the Act. Economic dependence is relevant when applying section 3(g) and determining whether a worker is an employee under the Act; however, determining whether a worker who is an employee under the Act has a joint employer for his or her work is a different analysis that is based on section 3(d). Thus, factors that assess the employee's economic dependence are not relevant to determine whether the worker has a joint employer. Examples of such factors include: (1) Whether the employee is in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight; (2) whether the employee has the opportunity for profit or loss based on his or her managerial skill; (3) whether the employee invests in equipment or materials required for work or the employment of helpers; and (4) the number of contractual relationships, other than with the employer, that the potential joint employer has entered into to receive similar services.

The Department's proposal identified certain business models (such as a franchise model), certain business practices (such as allowing the operation of a store on one's premises), and certain contractual agreements (such as requiring a party in a contract to institute sexual harassment policies) as not making joint employer status more or less likely under the Act. The Department received many comments in response to its proposal, and the final rule identifies even more business models, business practices, and contractual agreements as not making joint employer status more or less likely under the Act. This will allow parties to make business decisions and enter into business relationships with more certainty and clarity regarding what actions will result in joint liability under the Act.

In the other joint employer scenario under the Act—where multiple employers suffer, permit, or otherwise employ the employee to work separate sets of hours in the same workweek—the multiple employers are joint employers if they are sufficiently associated with respect to the employment of the employee. This approach is consistent with the Department's focus on the association between the potential joint employers. If the multiple employers are joint employers, they must aggregate the hours worked for each for purposes of determining compliance with the Act.

Finally, the final rule provides even more illustrative examples applying the Department's analyses to factual situations than did the proposal—again, to provide more certainty and clarity regarding who is and is not a joint employer under the Act.

The Department's estimates of the economic impacts of this final rule are discussed in sections VI and VII below. The Department estimates that costs in the form of regulatory familiarization with this final rule will range from $324.2 million to $416.7 million. Additionally, this final rule may reduce the number of persons who are joint employers in one scenario and as a result, employees will have the legal right to collect wages due under the Act from fewer employers. For these reasons, the Department acknowledges that there may be transfers from employees to employers. However, the Department lacks the data needed to calculate the potential amount or frequency of these transfers. This final rule is considered to be an Executive Order 13771 deregulatory action and is economically significant for the purposes of Executive Order 12866. Qualitative details of the cost savings, benefits, and other economic impacts are discussed below.

II. Background

A. The FLSA

The FLSA requires covered employers to pay their employees at least the federal minimum wage for every hour worked and overtime for every hour worked over 40 in a workweek.[9] The FLSA defines the term ''employee'' in section 3(e)(1) to mean ''any individual employed by an employer,'' [10] and defines the term ''employ'' in section 3(g) to include ''to suffer or permit to work.'' [11] ''Employer'' is defined in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee.'' [12]

B. Regulatory and Judicial History

In July 1939, a year after the FLSA's enactment, WHD issued Interpretative Bulletin No. 13 addressing, among other topics, whether two or more companies could be jointly and severally liable for a single employee's hours worked under the Act.[13] The Bulletin acknowledged the possibility of joint employer liability and provided an example where two companies arranged ''to employ a common watchman'' who had ''the duty of watching the property of both companies concurrently for a specified number of hours each night.'' [14] The Bulletin concluded that the companies ''are not each required to pay the minimum rate required under the statute for all hours worked by the watchman . . . but . . . should be

[8] 29 U.S.C. 203(g).

[9] *See* 29 U.S.C. 206(a), 207(a).

[10] 29 U.S.C. 203(e)(1).

[11] 29 U.S.C. 203(g).

[12] 29 U.S.C. 203(d).

[13] *See* Interpretative Bulletin No. 13, ''Hours Worked: Determination of Hours for Which Employees are Entitled to Compensation Under the Fair Labor Standards Act of 1938,'' ¶¶ 16–17. In October 1939 and October 1940, the Department revised other portions of the Bulletin not pertinent here.

[14] *Id.* ¶ 16.

considered as a joint employer for purposes of the [A]ct.'' [15]

The Bulletin provided a second example of an employee who works 40 hours for company A and 15 hours for company B during the same workweek.[16] The Bulletin explained that if A and B are ''acting entirely independently of each other with respect to the employment of the particular employee,'' they are not joint employers and may ''disregard all work performed by the employee for the other company'' in determining their obligations to the employee under the Act for that workweek.[17] On the other hand, if ''the employment by A is not completely disassociated from the employment by B,'' they are joint employers and must consider the hours worked for both as a whole to determine their obligations to the employee under the Act for that workweek.[18] Relying on section 3(d) of the FLSA, the Bulletin concluded by saying that, ''at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company.'' [19]

In 1958, the Department published a regulation, codified in 29 CFR part 791, which expounded on Interpretative Bulletin No. 13.[20] Section 791.2(a) reiterated that joint employer status depends on whether multiple persons are ''not completely disassociated'' or ''acting entirely independently of each other'' with respect to the employee's employment.[21] Section 791.2(b) explained, ''Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek,'' the employers are generally considered joint employers in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[22]

In 1961, the Department amended a footnote in the regulation to clarify that a joint employer is also jointly liable for overtime pay.[23] Since this 1961 update, the Department has not published any other updates to part 791 until this final rule.

In 1973, the Supreme Court decided *Falk* v. *Brennan,* a joint employer case.[24] *Falk* did not cite or rely on part 791, but instead used section 3(d) to determine whether an apartment management company was a joint employer of the employees of the apartment buildings that it managed.[25] The Court held that, because the management company exercised ''substantial control [over] the terms and conditions of the [employees'] work,'' the management company was an employer under section 3(d), and could therefore be jointly liable with the building owners for any wages due to the employees under the FLSA.[26]

In 1983, the Ninth Circuit issued a seminal joint employer decision, *Bonnette* v. *California Health & Welfare Agency*.[27] In *Bonnette,* seniors and individuals with disabilities receiving state welfare assistance (the ''recipients'') employed home care workers as part of a state welfare program.[28] Taking an approach similar to *Falk,* the court addressed whether California and several of its counties (the ''counties'') were joint employers of the workers under section 3(d).[29] In determining whether the counties were jointly liable for the home care workers under section 3(d), the court found ''four factors [to be] relevant'': ''whether the alleged [joint] employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.'' [30] The court noted that these four factors ''are not etched in stone and will not be blindly applied'' and that the determination of joint employer status depends on the circumstances of the whole activity.[31] Applying the four factors, the court concluded that the counties ''exercised considerable control'' and ''had complete economic control'' over ''the nature and structure of the employment relationship'' between the recipients and home care workers, and were therefore ''employers'' under section 3(d), jointly and severally liable with the recipients to the home care workers.[32]

In 2014, the Department issued Administrator's Interpretation (Home Care AI) No. 2014–2, concerning joint employer status in the context of home care workers.[33] Consistent with § 791.2, the Home Care AI described a joint employer as an additional employer who is ''not completely disassociated'' from the other employer(s) with respect to a common employee, and cited the breadth of the definitions of ''employer'' and ''employ'' in sections 3(d) and (g).[34] The Home Care AI opined that ''the focus of the joint employment regulation is the degree to which the two possible joint employers share control with respect to the employee and the degree to which the employee is economically dependent on the purported joint employers.'' [35] The Home Care AI opined that ''a set of [joint employer] factors that addresses only control is not consistent with the breadth of [joint] employment under the FLSA'' because section 3(g)'s ''suffer or permit'' language governs FLSA joint employer status.[36] The Home Care AI applied the four *Bonnette* factors as part of a larger multi-factor analysis that provided specific guidance about joint employer status in the home care industry.[37]

In 2016, the Department issued Administrator's Interpretation No. 2016–1 (Joint Employer AI) concerning joint employer status under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which the Department intended to be ''harmonious'' and ''read

[15] *Id.*

[16] *See id.* ¶ 17.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* 23 FR 5905 (Aug. 5, 1958).

[21] 29 CFR 791.2(a).

[22] 29 CFR 791.2(b) (footnotes omitted).

[23] *See* 26 FR 7730, 7732 (Aug. 18, 1961).

[24] *See* 414 U.S. 190.

[25] *See id.* at 195.

[26] *Id.*

[27] *See* 704 F.2d 1465, *abrogated on other grounds, Garcia* v. *San Antonio Metro. Transit Auth.,* 469 U.S. 528 (1985). Although the Ninth Circuit later adopted a thirteen-factor test in *Torres-Lopez* v. *May,* 111 F.3d 633, 639–41 (9th Cir. 1997), many courts have treated *Bonnette* as the baseline for their own joint employer tests.

[28] *See* 704 F.2d at 1467–68.

[29] *See id.* at 1469–70.

[30] *Id.* at 1470.

[31] *Id.*

[32] *Id.*

[33] U.S. Dep't of Labor, Wage & Hour Div., Administrator's Interpretation No. 2014–2, ''Joint Employment of Home Care Workers in Consumer-Directed, Medicaid-Funded Programs by Public Entities under the Fair Labor Standards Act'' (June 19, 2014), *available at http://www.dol.gov/whd/opinion/adminIntrprtn/FLSA/2014/FLSAAI2014_2.pdf.*

[34] *Id.* at 2, 2 n.2.

[35] *Id.* at 3 n.3.

[36] *Id.* at 3 n.4.

[37] *See id.* at 9–14.

in conjunction with'' the Home Care AI's discussion of joint employer status.[38] The Joint Employer AI, although also citing the definitions in sections 3(d) and (e), described section 3(g)'s ''suffer or permit'' language as determining the scope of joint employer status.[39] The Joint Employer AI opined that ''joint employment, like employment generally, 'should be defined expansively.' '' [40] It further opined that ''joint employment under the FLSA and MSPA [is] notably broader than the common law . . . which look[s] to the amount of control that an employer exercises over an employee.'' [41] The Joint Employer AI concluded that, because ''the expansive definition of 'employ' '' in both the FLSA and MSPA ''rejected the common law control standard,'' ''the scope of employment relationships and joint employment under the FLSA and MSPA is as broad as possible.'' [42] The Department rescinded the Joint Employer AI effective June 7, 2017.[43]

C. The Department's Proposal

On April 9, 2019, the Department proposed revisions to part 791 to update and clarify its interpretation of joint employer status under the FLSA. *See* 84 FR 14043–61.

For the joint employer scenario where an employee has an employer who suffers, permits, or otherwise employs an employee to work and another person simultaneously benefits from that work, the Department proposed that the other person is the employee's joint employer under the Act only if that person is acting directly or indirectly in the interest of the employer in relation to the employee. The Department proposed to adopt a four-factor balancing test derived (with one modification) from *Bonnette* v. *California Health & Welfare Agency* assessing whether the potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

The Department proposed to modify the first *Bonnette* factor so that a person's ability, power, or reserved contractual right to act with respect to the employee's terms and conditions of employment would not be relevant to that person's joint employer status under the Act.

The Department also proposed that additional factors may be relevant to this joint employer analysis, but only if they are indicia of whether the potential joint employer is:

- Exercising significant control over the terms and conditions of the employee's work; or
- Otherwise acting directly or indirectly in the interest of the employer in relation to the employee.

The Department further proposed that, in determining the economic reality of the potential joint employer's status under the Act, whether an employee is economically dependent on the potential joint employer is not relevant. The Department identified certain ''economic dependence'' factors that are not relevant to the joint employer analysis, including, but not limited to, whether the employee:

- Is in a specialty job or a job otherwise requiring special skill, initiative, judgment, or foresight;
- Has the opportunity for profit or loss based on his or her managerial skill; and
- Invests in equipment or materials required for work or for the employment of helpers.

The Department's proposal noted that a joint employer may be any ''person'' as defined by section 3(a) of the Act, which includes ''any organized group of persons.'' It also proposed that a person's business model (such as a franchise model), certain business practices (such as allowing an employer to operate a store on the person's premises or participating in an association health or retirement plan), and certain business agreements (such as requiring an employer in a business contract to institute sexual harassment policies), do not make joint employer status more or less likely under the Act.

In the other joint employer scenario under the Act—where multiple employers suffer, permit, or otherwise employ the employee to work separate sets of hours in the same workweek—the Department proposed only non-substantive revisions. Believing that part 791's current focus on the association between the potential joint employers is useful for determining joint employer status in this scenario, the Department proposed that the multiple employers are joint employers in this scenario if they are sufficiently associated with respect to the employment of the employee. The Department noted that, if they are joint employers, they must aggregate the hours worked for each for purposes of determining compliance with the Act.

Finally, the Department's proposal included several other provisions. First, it reiterated that a person who is a joint employer is jointly and severally liable with the employer and any other joint employers for all wages due to the employee under the Act. Second, it provided a number of illustrative examples that applied the Department's proposed joint employer rule. Third, it contained a severability provision.

III. Need for Rulemaking

The primary purpose of this final rule is to offer guidance explaining how to determine joint employer status where an employer suffers, permits, or otherwise employs an employee to work, and another person simultaneously benefits from that work.

In the proposed rule, the Department sought to revise and clarify the standard for joint employer status in order to give the public more meaningful, detailed, and uniform guidance of who is a joint employer under the Act. The Department noted that circuit courts currently use a variety of multi-factor tests to determine joint employer status, which have resulted in inconsistent treatment of similar worker situations, uncertainty for organizations, and increased compliance and litigation costs. To promote greater uniformity in court decisions and predictability for organizations and employees, the Department is adopting with modifications the four-factor test that it proposed for determining joint employer status.

As noted in the Proposed Rule, part 791 is silent on whether a business model can make joint employer status more or less likely, and in this final rule, the Department explains its longstanding position that certain business models—such as the franchise model—do not themselves indicate joint employer status under the FLSA. In addition, the Department presents illustrative examples of the degree of agreements and association between employers that will result in joint and several liability. These updates are intended to assist organizations that may be hesitant to enter into beneficial relationships or engage in worker-friendly business practices for fear of being held liable for the wages of

[38] U.S. Dep't of Labor, Wage & Hour Div., WHD Administrator's Interpretation No. 2016–1, ''Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act'' (Jan. 20, 2016).

[39] *See id.*

[40] *Id.* (quoting *Torres-Lopez,* 111 F.3d at 639).

[41] *Id.*

[42] *Id.*

[43] *See* News Release, U.S. Dep't of Labor, U.S. Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance (June 7, 2017), *available at https://www.dol.gov/newsroom/releases/opa/opa20170607.*

employees over whom they have insignificant control.

IV. Final Regulatory Revisions

A. Introductory Statement to Part 791

As explained in the NPRM's preamble, the Department proposed to make ''non-substantive revisions'' to the introductory statement provided in § 791.1. 84 FR 14047. In relevant part, the proposed statement reiterated the Department's intent for part 791 to ''serve as 'a practical guide to employers and employees as to how [WHD] will seek to apply [the FLSA],' '' [44] and continued to advise that the Department will use the interpretations provided in part 791 to guide its enforcement of the Act unless it ''concludes upon reexamination that they are incorrect or is otherwise directed by an authoritative judicial decision.'' *Id.*

The Department received no comments specifically addressing its proposed revisions to the introductory statement, but several commenters opined on matters germane to its substance. Senator Patty Murray and several worker advocacy groups, such as National Employment Lawyers Association (NELA) and the Low Wage Worker Legal Network, asserted that part 791 constitutes an interpretive rule that is not binding on courts. Asserting that the proposed rule's analysis contradicts much of the existing judicial precedent addressing FLSA joint employer status, these commenters stated that the proposal would be entitled to little judicial deference and of limited value for employers seeking to rely upon it. *See, e.g.,* NELA (''Why, for example, would any responsible employer in North Carolina follow the Department's . . . proposed test knowing that the Fourth Circuit endorsed an entirely different test in [*Salinas* v. *Commercial Interiors, Inc.,* 848 F.3d 125 (4th Cir. 2017)]?''); Low Wage Worker Legal Network (predicting ''a deluge of new litigation to understand whether, and to what extent, the law has shifted''). Many commenters representing employees asserted that the Department's proposed rule would be unlawful specifically because, in their opinion, it sets forth an analysis that ignores longstanding Supreme Court and circuit court precedent. *See, e.g.,* Coalition of State Attorneys General (Coalition of State AGs); Farmworker Justice; Legal Aid Justice Center.

By contrast, commenters representing employers praised the proposed rule in part for its potential to restore uniformity to the varied analyses currently applied by courts in different jurisdictions to determine FLSA joint employer status. For example, HR Policy Association asserted that ambiguity in the existing regulation has resulted in a ''maze of tests'' that produce different judicial outcomes in cases with similar facts, creating ''substantial uncertainty for employers with national operations.'' *See also* International Bancshares Corporation. Describing the same problem, the U.S. Chamber of Commerce asserted that the proposed rule would return ''much-needed uniformity to the Act's enforcement scheme, which Congress intended when it passed the legislation.'' As discussed below in greater detail, commenters representing employers overwhelmingly endorsed the proposed rule as a clear and appropriate interpretation of the FLSA.

The Department appreciates commenter feedback addressing the purpose and underlying legal authority of this rulemaking. As explained in greater detail below, the Department believes that the analysis adopted in this final rule is faithful to both the FLSA and to binding Supreme Court precedent. Although the analysis clearly differs, to varying degrees, from the myriad FLSA joint employer tests applied by the federal circuit courts of appeals, the Department has previously promulgated interpretive guidance regarding joint employer liability that overtly conflicts with the approach taken in a particular federal circuit.[45] And given the divergent views of joint employment in the circuit courts, it would not be possible to provide detailed guidance that is consistent with all of them. Moreover, the Department notes that some of the tests used by the circuit courts (including the standard articulated by the Fourth Circuit in *Salinas*) are based in part on the ambiguous guidance provided in the Department's existing part 791 regulation. And more importantly, some circuit courts use joint employer tests that are expressly grounded in the principle that the FLSA should be read broadly, and thus, any exemptions construed narrowly. For instance, in articulating a joint employer test that is broader than the *Bonnette* factors, the Fourth Circuit explained that ''because the [Fair Labor Standards] Act is remedial and humanitarian in purpose, it should be broadly interpreted and applied to effectuate its goals.'' [46] The Ninth Circuit likewise explained that ''the concept of joint employment should be defined expansively under the FLSA . . . in order to effectuate the broad remedial purposes of the Act'' when adopting a test that gives weight to a wide range of factors.[47]

While this principle is based in older Supreme Court case law,[48] the Supreme Court's more recent holding in *Encino* v. *Navarro* puts some doubt on the continued viability of that principle. In *Encino,* the Court held that barring a ''textual indication'' to the contrary, the exemptive provisions of the FLSA should be given a ''fair reading.'' [49] The Supreme Court ''reject[ed] th[e practice of construing FLSA exemptions narrowly] as a useful guidepost for interpreting the FLSA'' because it rests on ''the flawed premise that the FLSA pursues its remedial purpose at all costs.'' [50] Instead, '''[a] fair reading' of the FLSA, neither narrow nor broad, is what is called for.'' [51]

Accordingly, this update to the part 791 regulations reflects the

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[44] 84 FR 14058 (quoting *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 138 (1944)).

[45] For instance, the Department's withdrawn Joint Employer AI expressly recognized its conflict with the First and Third Circuits' approach of ''apply[ing] factors that address only or primarily the potential joint employer's control.'' U.S. Dep't of Labor, Wage & Hour Div., WHD Administrator's Interpretation No. 2016–1, ''Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act'' (Jan. 20, 2016); *see also* U.S. Dep't of Labor, Wage & Hour Div., Administrator's Interpretation No. 2014–2, ''Joint Employment of Home Care Workers in Consumer-Directed, Medicaid-Funded Programs by Public Entities under the Fair Labor Standards Act'' (June 19, 2014) (disagreeing with ''courts [that] apply only the factors addressing the potential joint employer's control'').

[46] *Salinas* v. *Commercial Interiors, Inc.,* 848 F.3d 125, 140 (4th Cir. 2017) (quoting *Benshoff* v. *City of Va. Beach,* 180 F.3d 136, 140 (4th Cir. 1999) (internal quotation marks and citation omitted)).

[47] *Torres-Lopez* v. *May,* 111 F.3d 633, 639 (9th Cir. 1997) (quoting *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748, 754 (9th Cir. 1979)); *see also Antenor* v. *D & S Farms,* 88 F.3d 925, 933 (11th Cir. 1996) (stating that ''because the FLSA and AWPA are remedial statutes, we must construe them broadly'' when determining joint employer liability); *Karr* v. *Strong Detective Agency, Inc., a Div. of Kane Servs.,* 787 F.2d 1205, 1207 (7th Cir. 1986) (''[W]e need to give this concept [of joint employer] an expansive interpretation in order to effectuate Congress' remedial intent in enacting the FLSA.'').

[48] *See, e.g., Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 296 (1985) (''The Court has consistently construed the [Fair Labor Standards] Act 'liberally to apply to the furthest reaches consistent with congressional direction,' . . . recognizing that broad coverage is essential to accomplish the goal of outlawing from interstate commerce goods produced under conditions that fall below minimum standards of decency.'') (citations omitted) (quoting *Mitchell* v. *Lublin, McGaughy & Assocs.,* 358 U.S. 207, 211 (1959)).

[49] 138 S. Ct. 1134, 1142 (2018) (finding ''no license to give the exemption [to the FLSA] anything but a fair reading''); *see also id.* at 1143 (finding ''no reason not to give the statutory text [of the FLSA exemption] a fair reading''); A. Scalia & B. Garner, Reading Law 363 (2012).

[50] *Encino,* 138 S. Ct. at 1142 (internal quotations omitted).

[51] *U.S. Dep't of Labor* v. *Bristol Excavating, Inc.,* 935 F.3d 122, 135 (3d Cir. 2019) (quoting *Encino,* 138 S. Ct. at 1142).

Department's consideration of *Encino,* and subsequent circuit courts' instruction to give the FLSA ''a fair reading.'' [52] The Department emphasizes that employers may safely rely upon the interpretations provided in revised part 791 under section 10 of the Portal-to-Portal Act unless and until any such interpretation ''is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259.

For additional clarity for stakeholders, the Department adopts in the final rule non-substantive revisions to clarify, streamline, and modernize the language of § 791.1. As in the prior rule, the introductory statement will comprise § 791.1 of the final rule.

B. Two Joint Employer Scenarios

The proposed rule stated that ''[t]here are two joint employer scenarios under the FLSA.'' 84 FR 14059. It described the first scenario as occurring when ''the employee has an employer who suffers, permits, or otherwise employs the employee to work . . . but another person simultaneously benefits from that work.'' *Id.* It described the second scenario as occurring when ''one employer employs a worker for one set of hours in a workweek, and another employer employs the same worker for a separate set of hours in the same workweek.'' *Id.* In this second scenario (unlike the first), the ''jobs and the hours worked for each employer are separate.'' *Id.* If the employers are joint employers of the worker, then all of the worker's hours worked for the employers are aggregated for the workweek, and ''both employers are jointly and severally liable for all of the hours the employee worked for them in the workweek.'' *Id.* Although the Department did not use such terms in its proposal and does not use such terms in its final rule, some courts have referred to the first scenario as ''vertical'' joint employment, and the second scenario as ''horizontal'' joint employment. *See, e.g., Chao* v. *A-One Med. Servs., Inc.,* 346 F.3d 908, 917 (9th Cir. 2003) (using the terms).

Several commenters appreciated the discussion of the two scenarios. National Federation of Independent Business described the proposal's distinction between the two scenarios as ''a single, crucial, and correct analytical step'' and agreed that ''the question of joint employer status arises under the FLSA in two different situations that call for two different standards tailored to those situations.'' The Society for Human Resource Management (SHRM) expressed its ''support[ ] [for] the Department's proposal to clarify and distinguish 'vertical' and 'horizontal' joint employment'' and ''the effort to provide clear and understandable explanations of when the two sets of concepts apply.'' The Retail Industry Leaders Association (RILA) stated that the proposal ''appropriately distinguishes 'vertical' from 'horizontal' joint employment situations by addressing them separately.'' Comments generally did not dispute the proposed rule's description of the two joint employer scenarios. For example, the National Employment Law Project (NELP) did not specifically comment on this feature of the proposed rule, but attached a copy of the Joint Employer AI to its comment, which similarly distinguished between the two scenarios.

In the final rule, the Department will continue to describe and distinguish between the two joint employer scenarios. This distinction is especially useful given the Department's position (both in its proposal and, as discussed below, in the final rule) that the prior rule's standard for determining joint employer status under the Act was not helpful and did not provide an adequate explanation in the first scenario, but is useful (with some non-substantive revisions) for determining joint employer status in the second scenario. Accordingly, the Department has not made any changes in the final rule to the first sentence of proposed § 791.2 or to any of the references to the two joint employer scenarios.

C. Section 3(d) as the Sole Textual Basis for Determining Joint Employer Status

Section 3(d) of the FLSA provides that an ''employer'' ''includes any person acting directly or indirectly in the interest of an employer in relation to an employee,'' ''includes a public agency,'' but ''does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.'' 29 U.S.C. 203(d). Under the Act, an ''employee'' is defined to mean, with certain exceptions, ''any individual employed by an employer,'' 29 U.S.C. 203(e), and ''employ'' ''includes to suffer or permit to work,'' 29 U.S.C. 203(g).

The proposed rule (§ 791.2(a)(1)) stated that, in the first joint employer scenario, the other person simultaneously benefitting from the employee's work ''is the employee's joint employer only if that person is acting directly or indirectly in the interest of the employer in relation to the employee.'' 84 FR 14059 (citing 29 U.S.C. 203(d)). The NPRM's preamble explained that ''the textual basis for FLSA joint employer status is section 3(d), not section 3(e)(1) or 3(g)''; ''3(e)(1) and 3(g) determine whether there is an employment relationship between the potential employer and the worker for a specific set of hours worked''; and ''3(d) alone determines another person's joint liability for those hours worked.'' *Id.* at 14050. Looking at the definitions' text, the NPRM's preamble further explained that sections 3(e)(1) and 3(g) ''do not expressly address the possibility of a second employment relationship'' and contemplate a single employer, but section 3(d), particularly its ''in the interest of an employer'' language, contemplates a second employer and ''encompasses any additional persons that may be held jointly liable for the employee's hours worked in a workweek.'' *Id.* The Department cited to *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722 (1947), *Falk* v. *Brennan,* 414 U.S. 190 (1973), and *Bonnette,* 704 F.2d 1465, to support its ''clear textual delineation'' and concluded that ''[e]xplicitly tethering the joint employer standard in part 791 to section 3(d) will provide clearer guidance on how to determine joint employer status consistent with the text of the Act.'' *Id.* at 14050–51.

A number of comments support adopting section 3(d) as the sole textual basis in the Act for determining joint employer status. For example, the U.S. Chamber of Commerce stated that the Department ''properly relies'' on section 3(d) ''rather than the broader 'employ' definition.'' According to the Chamber, the definition of ''employ'' ''is broad and intended to identify employees from those who would otherwise be independent contractors under common law,'' but ''that context is markedly different from the joint employer question, where it is not a question of whether the worker is in the employ of some entity, but rather whether a different, additional entity should also face liability as that worker's 'employer.'" Associated Builders and Contractors stated that it ''strongly supports the Department's clarification that only the definition of an 'employer' in section 3(d) . . . determines joint employer status, not the definition of 'employee' in Section 3(e)(1) or the definition of 'employ' . . . in section 3(g).'' RILA ''commend[ed] the [Department] for clearly explaining and establishing the statutory basis for its

[52] *Id.; see also Diaz* v. *Longcore,* 751 F. App'x 755, 758 (6th Cir. 2018) (rejecting plaintiffs' request to ''interpret [FLSA] provisions to provide broad rather than narrow protection to employees'' because ''[w]e must instead give the FLSA a 'fair interpretation' '') (citing *Encino,* 138 S. Ct. at 1142).

interpretation and application of joint employer status,'' ''agree[d] that it is useful to ground the regulatory approach to joint employer status on the statutory definition of 'employer' '' in section 3(d), and further agreed that the ''statutory construction'' of section 3(d) ''presumes that an at-issue worker already is employed by at least one employer when assessing whether another person or entity is *also* that person's employer.'' Coalition for a Democratic Workplace asserted that, ''contrary to likely critics of the Proposed Rule, its focus on the definition of 'employer' as the term most relevant to the joint employer analysis does not undermine the Act's separate goal of covering a broad range of working relationships.'' Washington Legal Foundation added that ''[t]he correctness of DOL's decision to focus on the statutory definition of 'employer' is confirmed by *Falk,* which also focused on [section] 3(d) in arriving at its definition of a 'joint employer.' ''

Finally, the Center for Workplace Compliance (CWC) also supported the Department's proposed legal analysis: ''While some authorities have assessed joint employment status by reference to all three definitions, the clearest textual interpretation is, as expressed by DOL in the preamble, that sections 3(e)(1) and 3(g) 'determine whether there is an employment relationship between the potential employer and the worker for a specific set of hours worked, and [section] 3(d) alone determines another person's joint liability for those hours worked' '' (quoting 84 FR 14050) (footnotes omitted). CWC added that the Department's interpretation ''is also consistent with Supreme Court precedent, as explained in the preamble, comparing *Falk* v. *Brennan,* a case that relied on [s]ection 3(d) to find a joint employment relationship, with *Rutherford Food Corp.* v. *McComb,* a case that found workers to be employees rather than independent contractors.'' *Id.* (footnotes omitted). Although it supports the Department's analysis, CWC, however, asserted that the proposed regulatory text did not clearly enough incorporate that analysis and ''urge[d] DOL to include an explicit statement that joint employer status is determined by [s]ection 3(d) in the text of the final rule itself.''

Numerous other comments challenged the Department's proposed statutory analysis. They argued that that sections 3(d), 3(e), and 3(g) are all relevant for determining joint employment, and that the proposal that joint employer status is based only on section 3(d) is contrary to the Act's text, judicial precedent, and legislative intent. Starting with section 3(d)'s text, Southern Migrant Legal Services noted that the definition, compared to most of the other definitions in section 3 of the FLSA, merely provides that ''employer'' includes certain persons and thus ''provides only an incomplete description of the term 'employer.' '' It claims that the definition is ''circular'' and quotes *Irizarry* v. *Catsimatidis,* 722 F.3d 99, 103 (2d Cir. 2013) for the proposition that the Act ''nowhere defines 'employer' in the first instance.'' *See also* Low Wage Worker Legal Network (''The language of the [Act] does not support [the Department's proposed] interpretation. The word 'joint' does not appear in § 203(d). However, the word 'includes' in . . . § 203(d) would suggest that there are other types of employers under the FLSA than those that meet the statutory definition of § 203(d).''). AFL–CIO stated that, rather than defining the term ''employer'' itself, section 3(d) ''simply makes clear that the term employer includes the employer's agents.'' *See also* Southern Migrant Legal Services (''Section 3(d) was not drafted to provide a comprehensive definition of 'employer,' but to simply make clear it included many corporate officers and managers, as well as the business entities for which they worked.''). SEIU described how, as a general matter, an employer's individual agents are not liable for the employer's actions, but that section 3(d) ''was enacted largely to ameliorate the adverse impact of the . . . rule proscribing individual liability in the absence of grounds for piercing the corporate veil'' (citing *Donovan* v. *Agnew,* 712 F.2d 1509, 1513 (1st Cir. 1983); *Dole* v. *Elliott Travel & Tours, Inc.,* 942 F.2d 962, 965 (6th Cir. 1991)). *See also* NELP (''[M]ost of the cases interpreting 203(d) consider instances where a 'person'—natural or corporate—is sufficiently involved in a corporation's day-to-day functions to be an 'employer' under the FLSA''). In sum, according to Southern Migrant Legal Services, ''[t]he point of including Section 3(d) in the Act was 'to prevent employers from shielding themselves from responsibility for the acts of their agents' '' (quoting *Donovan* v. *Agnew,* 712 F.2d at 1513).

Numerous comments also took issue with the Department's proposal to exclude sections 3(e) and 3(g) from any joint employer analysis. The Coalition of State AGs stated that ''[t]he three definitions are interrelated, and courts have considered them together in analyzing joint-employment status'' (citing, *e.g., Baystate Alt. Staffing, Inc.* v. *Herman,* 163 F.3d 668, 675 (1st Cir. 1998)). Greater Boston Legal Services stated that ''[c]ourts around the country have . . . looked at the intertwined nature of the FLSA definitions for employ (Section 3(e)(1)), employee (Section 3(g)) and employer (Section 3(d)) to guide joint-employer analysis'' (citing cases). Comments also discussed the breadth of the definitions. *See, e.g.,* Coalition of State AGs (''Thus, the FLSA's far-reaching definitions for the terms 'employer,' 'employee,' and 'employ' must be read broadly in light of the statute's remedial purpose.'') (citing cases); AFL–CIO (asserting that the Department's proposal fails to acknowledge ''the Supreme Court's repeated admonitions concerning the breadth of the definition of employment under the FLSA.'').

Comments further stated that the history and purpose of section 3(g)'s definition of ''employ'' as including ''to suffer or permit to work,'' given the particular meaning of that language and similar language in child labor statutes around the time of the FLSA's enactment, was to ensure that a business that engaged another to provide it with workers was also an employer of the workers under the Act. *See, e.g.,* NELP (''[I]n fact, the central purpose of ['suffer or permit'] and its established understanding when inserted by Congress into the FLSA in 1938 was to do just that: to hold companies accountable for child labor (and minimum wage and overtime) violations even where the workers were directly hired, supervised, and paid by an independent contractor of that company.''); Farmworker Justice (''[W]here businesses took advantage of child labor and substandard labor practices but sought to evade responsibility by claiming an intermediary was the sole employer, the suffer or permit to work standard was applied to hold them accountable as 'employers.' ''); Public Justice Center (''Thus, when the suffer or permit to work language was included in the FLSA, it allowed for joint responsibility of contractors and the businesses for whom they contracted to supply workers. That well-settled meaning was incorporated into the FLSA.''). In addition, comments described the Department's proposed legal analysis excluding section 3(g) from determining joint employer status as ''unique,'' *see* Public Justice Center, ''irrational[ ]'' and ''utterly inconsistent with the statute and the case law,'' *see* Farmworker Justice, a ''novel and unsupportable proposition,'' *see* NELP, and ''fundamentally unsound'' (Greater Boston Legal Services, pg. 5). *See also*

SEIU (''The idea that the § 203(g) definition of 'employ' is irrelevant to a determination of the existence of a joint employer relationship is truly remarkable, contradicted as it is by virtually every reported appellate opinion that concerns joint employment under the FLSA.'').

Finally, some commenters viewed the Department as misstating Supreme Court decisions to defend its reliance on section 3(d) and exclusion of sections 3(e) and (g) when determining joint employer status. For example, Senator Patty Murray described the proposal's discussion of *Falk* v. *Brennan* as ''conclusory'' and ''obscur[ing] the Court's actual statement'' in that decision. According to Senator Murray, ''[t]he Court [in *Falk*] did not state, as the Department proposes to, that joint employment was to be decided with the exclusion of the FLSA's definition of 'employ'; in fact, the Court used the definition of 'employee' at 3(e)(1) that the Department proposes to exclude.'' Senator Murray concluded that the NPRM's ''claim that the Court [in *Falk*] somehow limited joint employer analysis to 3(d) by being silent on 3(g) is without merit.'' The Coalition of State AGs asserted that the Department's proposed legal analysis ''presents misleading characterizations of several Supreme Court cases,'' particularly *Rutherford Food.* NELP stated that the Department's proposed interpretation of section 3(g) conflicts with controlling Supreme Court authority, particularly *Rutherford Food.* And Farmworker Justice stated that the NPRM's description of *Rutherford Food* was ''fatally flawed,'' ''misstate[d] the facts and holding'' of that decision, and was ''wrong when it states that the . . . Court's invocation of the 'suffer or permit' definition in section 3(g) was merely to determine whether the [workers] were independent contractors rather than employees.''

Having considered the comments, the Department adopts as proposed the interpretation that section 3(d) is the statutory basis for determining joint employer status under the Act.

On the one hand, section 3(e) defines an ''employee'' to mean ''any individual employed by an employer.'' 29 U.S.C 203(e)(1). This definition, by its plain terms, focuses on the individual's status as an employee or not under the Act. However, in the first joint employer scenario, the individual's status as an employee is unquestioned. In the first scenario, the individual is an employee of one employer whose work for that employer happens to simultaneously benefit another person, and the issue is whether that other person is also the employee's employer. Moreover, section 3(e)—not section 3(d)—incorporates the Act's definition (in section 3(g)) of ''employ'' as including ''to suffer or permit to work.'' *Compare* 29 U.S.C. 203(e)(1) (defining ''employee'' as, with certain exceptions, ''any individual *employed* by an employer) *with* 29 U.S.C. 203(d) (using neither ''employ'' nor ''employed'') (emphasis added). As the Supreme Court has ruled, the Act's definition of ''employ'' was a rejection of the common law standard for determining who is an employee under the Act in favor of a broader scope of coverage. *See Nationwide Mut. Ins. Co.* v. *Darden,* 503 U.S. 318, 326 (1992) (''[T]he FLSA . . . defines the verb 'employ' expansively to mean 'suffer or permit to work.' This . . . definition, whose striking breadth we have previously noted, stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'') (citations omitted); *Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 150–51 (1947) (''But in determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.'') (citations omitted). Thus, sections 3(e) and 3(g) determine whether an individual worker is an employee under the Act.

On the other hand, section 3(d) defines ''employer'' to include ''any person acting directly or indirectly in the interest of an employer in relation to an employee.'' 29 U.S.C. 203(d). This language, by its plain terms, contemplates an employment relationship between an employer and an employee, as well as another person who may be an employer too—which exactly fits the first joint employer scenario under the Act. In that scenario, there is unquestionably an employee employed by an employer, and the issue is whether another person is an employer as well. This language from section 3(d) makes sense only if there is an employer and employee with an existing employment relationship and the issue is whether another person is an employer. Indeed, among the Act's definitions, only this language from section 3(d) contemplates the possibility of a person in addition to the employer who is also an employer and therefore jointly liable for the employee's hours worked.

The courts' decisions in *Falk* and *Bonnette* support focusing on section 3(d) as determining joint employer status. In *Falk,* it was ''clear that the maintenance workers [were] employees of the building owners.'' 414 U.S. at 195. The issue thus was whether another person (D & F) was ''also an 'employer' of the maintenance workers under s[ection] 3(d) of the Act, which defines 'employer' as 'any person acting directly or indirectly in the interest of an employer in relation to an employee.' '' *Id.* (quoting 29 U.S.C. 203(d)). The Court did not mention section 3(g), and although it referenced section 3(e), it squarely focused on section 3(d) and whether the other person was an ''employer'' as determining the inquiry. *Id.* The Court concluded: ''In view of the expansiveness of the Act's definition of 'employer' and the extent of D & F's managerial responsibilities at each of the buildings, which gave it substantial control of the terms and conditions of the work of these employees, we hold that D & F is, under the statutory definition, an 'employer' of the maintenance workers.'' *Id.* Similarly, *Bonnette* framed the issue as whether additional persons were jointly responsible to the employees under the Act, identified and discussed the definition of ''employer'' under section 3(d) as determining the additional persons' joint responsibility, did not mention sections 3(e) or 3(g), and ''conclude[d] that, under the FLSA's liberal definition of 'employer,' the [additional persons] were employers of the [employees],'' *i.e.,* ''joint employers.'' 704 F.2d at 1469–1470.

Rutherford Food is not contrary to this statutory interpretation separating sections 3(e) and (g) from section 3(d). In *Rutherford Food,* the focus was on whether the workers were employees under the FLSA or independent contractors: The Department argued that the workers were ''within the classification of employees, as that term is used in the Act,'' the district court disagreed and ruled ''that they were independent contractors,'' and the court of appeals reversed because ''the test for determining who was an employee under the Act was not the common law test of control,'' and the underlying economic realities showed that the workers were employees. 331 U.S. at 726–27. The Court cited in a footnote the Act's definitions of ''employer,'' ''employee,'' and ''employ,'' *see id.* at 728 n.6, but in determining the workers' status as employees or independent contractors, it relied only on section

3(g): ''The definition of 'employ' is broad. It evidently derives from the child labor statutes and it should be noted that this definition applies to the child labor provisions of this Act.'' *Id.* at 728. Looking at ''the circumstances of the whole activity,'' the Court concluded: ''While profits to the [workers] depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor. Upon the whole, we must conclude that these [workers] were employees of the slaughtering plant under the Fair Labor Standards Act.'' *Id.* at 730. *See also id.* at 729 (''Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act.''). Indeed, the Court in *Darden* later discussed *Rutherford Food* in the context of whether certain workers were employees or not and explained how section 3(g) means that the scope of who is an employee under the Act is broader than under other statutes. *See* 503 U.S. at 325–26. The *Darden* Court noted that *Rutherford Food* ''adopted a broad reading of 'employee' under the [Act],'' cited *Rutherford Food* to state that ''[t]he definition of 'employee' in the [Act] evidently derives from the child labor statutes,'' and further cited *Rutherford Food* to conclude that the ''striking breadth'' of section 3(g)'s definition of ''employ'' ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' *Id.*

Finally, the statements in the proposed rule and the final rule that another person ''is the employee's joint employer only if that person is acting directly or indirectly in the interest of the employer in relation to the employee'' and the citation to section 3(d) make explicitly clear that section 3(d)—not sections 3(e) or 3(g)—is the statutory basis for determining joint employer status under the Act.

For all of the foregoing reasons, the Department has not made any changes in the final rule to the first two sentences of proposed § 791.2(a)(1).

D. Requests To Adopt the National Labor Relations Act Standard

A few comments requested that the Department adopt as the joint employer standard under the FLSA the standard that once existed under the National Labor Relations Act (NLRA), or that the Department harmonize its FLSA standard with the NLRA standard. For example, the National Association of Professional Employer Organizations stated that ''the test for joint employment should focus on the actual exercise of [direct and immediate] control over the essential terms and conditions of employment of an employee.'' *See also* National Association of Convenience Stores. In other words, as the National Association of Professional Employer Organizations explained, these comments seek application of the standard that the National Labor Relations Board (NLRB) applied under the NLRA ''for decades prior to [its *Browning-Ferris* decision], and [which it] presently is proposing to adopt . . . in a notice of proposed rulemaking.'' A few other comments that generally supported the proposed rule nonetheless referenced a direct and immediate control standard or requested that the FLSA standard be harmonized with the NLRA standard or all federal law standards. *See, e.g.,* National Association of Truckstop Operators; National Association of Home Builders (NAHB); National Federation of Independent Business. Finally, International Franchise Association, in addition to supporting the proposed rule, recommended adopting, ''at least in connection with franchising,'' ''the common law 'instrumentality' test'' asking whether the potential joint employer has control over the specific behavior or condition of employment relevant in the given case.

The Department rejects these requests because they have no legal basis. As an initial matter, the NLRA defines ''employer'' differently from the FLSA [53] and does not define ''employ'' at all.[54] In addition, the NLRB independently enforces the NLRA; the Department has no role in enforcing the NLRA. And although the Court in *Rutherford Food* suggested (over seventy years ago) that NLRA decisions may be ''persuasive'' when deciding similar FLSA matters, 331 U.S. at 723–24, the NLRA decision cited by the Court was abrogated by Congressional amendments to the NLRA. *See Darden,* 503 U.S. at 324–25 (discussing Congressional amendments to the NLRA as a result of *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 111 (1944)). Congress did not similarly amend the FLSA as a result of *Rutherford Food.* Finally, as discussed above, Congress rejected the common law standard when enacting the FLSA. *See Darden,* 503 U.S. at 326; *Portland Terminal,* 330 U.S. at 150–51. For all of the foregoing reasons, the Department has not made any changes in the final rule in response to these comments.[55]

E. Determining Joint Employer Status in the First Scenario (One Set of Hours Worked)

Current part 791 determines joint employer status by asking whether two or more persons are or are not ''completely disassociated'' with respect to the employment of the employee.'' [56] The proposed rule explained that this standard is not helpful for determining joint employer status in one of the joint employer scenarios under the Act—where an employer suffers, permits, or otherwise employs an employee to work one set of hours in a workweek, and that work simultaneously benefits another person (for example, where the employer is a subcontractor or staffing agency, and the other person is a general contractor or staffing agency client). *See* 84 FR 14046 47. In this scenario, the employer and the other person are almost never ''completely disassociated.'' *Id.* As noted in the NPRM, the ''not completely disassociated'' standard may therefore suggest that these situations always result in joint employer status, contrary to long-standing policy. *Id.* Thus, the Department proposed to replace the language of ''not completely disassociated'' as the standard in such scenarios with a four-factor balancing test derived (with modification) from *Bonnette,* 704 F.2d 1465. *See* 84 FR 14047 48. The four proposed factors considered whether the potential joint employer hires or fires the employee; supervises and controls the employee's work schedules or conditions of employment; determines the employee's rate and method of payment; and maintains the employee's employment records. *Id.* The NPRM also clarified that the factors were intended to focus on the economic realities of the potential joint employer's exercise of control over the terms and conditions of the employee's work. 84 FR 14048.

The Department received robust commentary from a range of

[53] *Compare* 29 U.S.C. 152(2) *with* 29 U.S.C. 203(d).

[54] *Compare Browning-Ferris Indus. of Cal., Inc.* v. *Nat'l Labor Relations Bd.,* 911 F.3d 1195, 1206 (D.C. Cir. 2018) (''[T]he National Labor Relations Act's test for joint-employer status is determined by the common law of agency[.]'') *with Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 301 (1985) (''The test of employment under the [Fair Labor Standards] Act is one of 'economic reality[.]' '').

[55] This final rule provides the standards for determining joint employer status under the FLSA. The Department will continue to use the standards in its MSPA joint employer regulation, 29 CFR 500.20(h)(5), to determine joint employer status under MSPA, and will continue to use the standards in its FMLA joint employer regulations, 29 CFR 825.106, to determine joint employer status under the FMLA.

[56] 29 CFR 791.2(a) (2019).

stakeholders concerning how to determine joint employer status in the first scenario (one set of hours worked). Below, the Department first addresses comments received regarding the four-factor balancing test, discussing each factor and the final adopted language for the test itself. The Department then discusses the application of the four-factor test and limits on the consideration of additional factors. Finally, the Department provides specific guidance concerning factors and business practices that should be excluded from the analysis, which it believes will provide additional clarity.

1. The Four-Factor Balancing Test

Employers and employer representatives widely expressed general support for the adoption of the proposed four-factor balancing test, agreeing that it would provide necessary uniformity, clarity, and certainty for businesses. For example, the HR Policy Association commented that the ''Department's proposed rule, and in particular its proposed four-factor test, and related guidance expressly identifying key considerations and factors that are relevant and are not relevant, finally fill in the space where businesses confront joint employer issues today.'' *See also* Center for Workforce Compliance (''CWC supports the four factor balancing test that DOL has proposed[.]''); Restaurant Law Center and the National Restaurant Association (RLC & the Association) (agreeing ''that a multi-factor balancing test is appropriate''); Electronic Security Association (''[T]his four-factor balancing test as outlined will give more clarity and provide courts with firm guidance[.]''); National Council of Agricultural Employers (praising the ''four-factor balancing test set forth in'' *Bonnette* as ''provid[ing] clarity and order''); NAHB (expressing support for the four-factor balancing test). Additionally, commenters noted that this increased clarity would, in turn, promote new and innovative business partnerships and allow for best practices within industries. The National Association of Truckstop Operators commented that the proposed test ''would enable NATSO's members—large and small—to enter into a variety of business relationships with certainty as to whether they may be held responsible for another entity's employees. They would know that they could provide high-level requirements for their business partners' employees (*e.g.,* minimum training levels, inspection and delivery methods, *etc.*) and not be considered joint employers provided they do not affect the *terms and conditions of employment* (*e.g.,* hiring, firing, work schedules, wages, *etc.*).'' Associated Builders and Contractors explained that inconsistent court rulings ''have confused and frustrated efforts of construction employers to maintain longstanding industry practices that have allowed the industry to perform services on a cost-efficient basis, but which are now placed in jeopardy by the over-broad joint employer standard espoused by some courts and the increased litigation costs resulting from the judicial confusion.''

Employer representatives commented that there was support among circuit court rulings for using these particular factors. The National Retail Federation stated that the ''*Bonnette* test has been used for decades by the plurality of U.S. Courts of Appeals, and if adopted, would provide employers with certainty and stability in how the joint employer standard applies to their operations and business relationships.'' SHRM agreed, commenting that by ''ensuring that the inquiry is directed at a putative joint employer's *actual control* over critical terms of employment, the proposal stands on solid ground statutorily, and is consistent with the relevant Supreme Court authority.'' The International Franchise Association noted that the ''*Bonnette* test has stood the test of time and provides the clearest guidance to employers and employees attempting to determine which business entities are or are not joint employers under specific circumstances.'' The U.S. Chamber of Commerce further stated that the proposed test would help ''rein in courts that have judicially expanded the scope of joint employer liability beyond Congress's intent'' by providing uniformity and properly focusing only on the FLSA's definition of ''employer'' to determine joint employer status, rather than the broader definition of ''employ.''

The Retail Industry Leaders Association (RILA) and Society of Independent Gasoline Marketers of America expressed general support, but expressed concern that the proposal may be read to indicate that satisfying any single factor would be sufficient to confer joint employer status, and these commenters requested that the Department specify that establishing one factor will typically not be sufficient.

Employee representatives, workers, and worker advocacy groups generally opposed the proposed four-factor test as too restrictive and commented that using this test would harm workers, particularly vulnerable and low-wage workers. *See, e.g.,* Greater Boston Legal Services (''Arbitrarily narrowing the standard to make it more difficult for employees to hold their actual employers accountable for FLSA violations will particularly harm low-wage workers and workers engaged in piecemeal, temporary, or contingent labor.''); NELA (''If enacted, the Proposed Rules will result in the loss of protections to workers whom Congress sought to protect by expansively defining the FLSA's coverage.''); Legal Aid Justice Center (''If enacted, the Proposed Rule would cause grievous harm to Virginia's poorest and most vulnerable workers.'').

Many of these commenters contended that the Department's proposed test is inconsistent with case law. Southern Migrant Legal Services disagreed with the NPRM's statement that the proposed four-factor test ''finds considerable support in the plurality of circuit courts that already apply similar multi-factor, economic realities tests'' and stated that this assertion ''badly misstates the law.'' Commenters noted that not a single circuit court has adopted the test as precisely formulated by the Department. *See, e.g.,* Coalition of State AGs (''The Proposed Rule incorporates a four-factor test that no court has articulated or implemented and is more restrictive than current joint-employment standards.''). The AFL–CIO also addressed the Department's legal analysis, commenting that the NPRM misreads *Bonnette* because the court in that case explicitly noted that the circumstances of the whole activity must be considered, not exclusively the four factors; the AFL–CIO noted further that *Bonnette* has been criticized or rejected by several other circuit courts, including the Ninth Circuit. Greater Boston Legal Services commented that the Department's proposed test would ''wipe out decades of court precedent and create confusion and prolonged litigation. The Department has departed from *Bonnette* and prevailing First Circuit decisions in two ways—by altering the four-prong *Bonnette* test and by adding a series of additional proposals that further restrict criteria that courts may consider when determining joint employment status.''

Commenters also opined that the four-factor test was contrary to Congressional intent, and instead, courts must consider all relevant facts in view of the case law, statutory text, and legislative history. *See, e.g.,* National Women's Law Center (asserting that it would be contrary to Congressional intent and the language of the FLSA to limit the joint employer inquiry to just the *Bonnette* factors); Low Wage Worker Legal Network (same). Senator Patty Murray

stated that because ''Congress intentionally drew the FLSA's definition of employment to be more expansive than the common law, the Department's proposal to narrow the standard is clearly and directly opposed to congressional intent.''

Additionally, many commenters stated that the proposed four-factor test was contrary to the plain language of the Act and its broad definitions of ''employ'' and employee.'' *See, e.g.,* 14 U.S. Senators (''But DOL proposes to ignore the plain language of the statute, inventing a new and extremely restrictive standard that employees would have to show to hold their employers liable for abuses for which Congress intended them to be responsible.''); NELP (''[C]ontrolling Supreme Court and Circuit Court authority conflicts with DOL's novel and unsupportable proposition that the definition of 'employ' in section 203(g) does not authorize a court to find joint employment.''). These concerns are addressed in the textual basis discussion of this preamble, *supra,* in which the Department explains its interpretation of section 3(d) and why it is the most appropriate textual basis for analyzing whether an entity is a joint employer under the Act.

In addition to commenting on the proposed four-factor test generally, commenters also addressed the factors individually. Comments received regarding each individual factor follow below.

Commenters specifically remarked upon the Department's modification of the *Bonnette* test regarding the first factor. The Department proposed that the first factor should be narrowed to consider only whether the potential joint employer hires or fires the employee, rather than whether the potential joint employer has the ''power'' to hire or fire the employee (as *Bonnette* articulates the factor). Employer representatives supported the modification to require an actual exercise of control in this regard, stating that this would provide clarity for employers and encourage and increase innovative business agreements. For example, the U.S. Chamber of Commerce noted that the change reflected the ''recognition that actual control, rather than reserved control, must exist for a joint employee-employer relationship to arise'' and that ''[i]t is also consistent with the Rule's statement that the facts of the relationship between the employee and employer, rather than the structure of the relationship between cooperating businesses, should govern.'' Several commenters endorsed the NPRM's assertion that evaluating whether an entity ''act[ed]'' to exercise control would be consistent with the text of section 3(d) of the Act. *See, e.g.,* RLC & the Association (agreeing that the proposed modification is consistent with section 3(d) and that ''[i]f there is no action by the alleged joint employer, then Section 3(d) does not apply, and there can be no joint employment relationship.'').

Employee representatives opposed this proposed factor, commenting that by only considering as relevant whether a potential joint employer actually exercises its power to hire and fire, the Department would be in conflict with every court, and would be narrowing the test to be even more restrictive than the common law. *See, e.g.,* Advocates for Basic Legal Equality (''Even under the more restrictive common-law employment test, the DOL's proposal is too narrow: It fails to consider the right to control, a cornerstone of common-law employment determinations under long-standing Supreme Court and FLSA law.''); NELP (''The restrictive common law control test requires only a showing of the 'right' to control, not its exercise.''). Additional discussion concerning the actual exercise of control versus the reserved right to control is included *infra.*

Regarding the second factor, whether the potential joint employer supervises and controls the employee's work schedule or conditions of employment, several commenters asked the Department to clarify or narrow what is meant by ''conditions of employment.'' For example, the HR Policy Association suggested that the proposed factor be limited to considering whether the potential joint employer ''[s]upervises and controls the employee's individual work schedule or the employee's particular, day-to-day tasks.'' Similarly, the Retail Industry Leaders Association suggested that the factor be limited to mean ''specific hours worked and specific assigned tasks.'' *See also* National Retail Federation (same); RLC & the Association (recommending ''that a substantial frequency requirement be included in the definition and/or examples with respect to the second factor. Preferably, this would be a 'day-to-day' frequency requirement'').

There were few comments specifically addressing the third factor, whether the potential joint employer determines the employee's rate and method of payment.

There were a number of comments, primarily from employer representatives, concerning the fourth factor, which considers whether the potential joint employer maintains the employee's employment records. Some commenters asked the Department to provide additional guidance regarding what qualifies as maintenance of employment records for purposes of the fourth factor and whether this factor alone can lead to a finding of joint employment. *See, e.g.,* NACS; NAPEO; RLC & the Association; SHRM. Some commenters suggested that records related to the employer's compliance with contractual agreements identified in this rule as not making joint employer status more or less likely should not qualify as employment records under the fourth factor. *See* CDW. Others suggested that for purposes of satisfying the fourth factor, only those records that pertain to the first three factors should be employment records. *See* RILA; SHRM. Commenters also queried whether maintenance of records under the fourth factor means something more than mere possession of or access to those records. *See* SHRM. Finally, some commenters suggested that the fourth factor be deleted in the final rule. *See* NACS; NAPEO; RLC & the Association.

After review and careful consideration, the Department adopts the proposed four-factor balancing test, derived from *Bonnette* and supported by other case law, as the test for analyzing joint employer status under this scenario, with a revision to the supervision and control factor and additional guidance regarding the maintenance of employment records factor. The Department believes that these four factors—which weigh the economic reality of the potential joint employer's control, direct or indirect, over the employee—are not only the most relevant factors to the joint employer analysis, but also afford stakeholders greatly needed clarity and uniformity.

As a matter of statutory interpretation, these factors are fully consistent with the text of section 3(d) of the Act. As explained in detail *supra,* the Department believes that language in section 3(d) is the textual basis for joint employer status. When another person exercises control over hiring and firing, schedules, conditions of employment, rate and method of payment, and employment records, that person is ''acting . . . in the interest of'' the employer ''in relation to'' the employee, as contemplated by section 3(d). Recognizing this provision, *Bonnette* adopted a similar four-factor test to determine whether a potential joint employer is liable. Contrary to some comments, these factors are consistent with Supreme Court and circuit court precedent. The Supreme Court concluded in *Falk,* 414 U.S. at 195, that

pursuant to section 3(d), another person is jointly liable for an employee if that person exercises ''substantial control'' over the terms and conditions of the employee's work. The Department's four-factor balancing test, which weighs the potential joint employer's exercise of control over certain terms and conditions of the employee's work, uses the same reasoning as *Falk* to determine joint employer status under section 3(d). In *Falk,* the Court explained that ''[i]n view of the expansiveness of the Act's definition of 'employer' [in section 3(d)] and the extent of D & F's managerial responsibilities at each of the buildings, which gave it substantial control of the terms and conditions of the work of these employees, we hold that D & F is, under the statutory definition [in 3(d)], an 'employer' of the maintenance workers.'' 414 U.S. at 195.

Additionally, multiple circuit courts have adopted multi-factor balancing tests derived from *Bonnette* in order to analyze potential joint employer scenarios. The First and Fifth Circuits apply the *Bonnette* test, which is very close to the Department's proposed test. *See Baystate,* 163 F.3d at 675–76; *Gray* v. *Powers,* 673 F.3d 352, 355–57 (5th Cir. 2012). Although *Gray* involved whether an individual owner of the employer corporation was jointly liable under the FLSA, the court noted that it ''must apply the economic realities test to *each individual* or entity alleged to be an employer and each must satisfy the four part test.'' 673 F.3d at 355 (emphasis added) (quotation marks and citation omitted).[57] The Third Circuit also applies a similar four-factor test that considers whether the potential joint employer has the authority to hire and fire, promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours; it also considers whether the potential employer exercises day-to-day supervision, including employee discipline; and controls employee records, including payroll, insurance, and tax records. *See In re Enter. Rent-A-Car Wage & Hour Emp't Practices Litig.,* 683 F.3d 462, 469–71 (3d Cir. 2012). As the Third Circuit noted, ''[t]hese factors are not materially different'' from the *Bonnette* factors, which are not significantly different from the Department's adopted factors. *Id.* at 469. The Seventh Circuit has also suggested that joint employment depends on the measure of control exercised over the employee and that the *Bonnette* factors are relevant when assessing control. *See Moldenhauer* v. *Tazewell-Pekin Consol. Commc'ns Ctr.,* 536 F.3d 640, 643 45 (7th Cir. 2008) (FMLA case addressing joint employment and using FLSA principles).

The Department, of course, acknowledges that several other circuits currently apply varying joint employer tests. Indeed, this variance across the country is one of the primary reasons for this rulemaking; by promulgating a clear and straightforward regulation, the Department hopes to encourage greater consistency for stakeholders. Of the circuits that apply different joint employer tests, however, each of them applies at least one factor that resembles one of the factors from the Department's test. In *Salinas,* 848 F.3d at 141 42, three factors of its six-factor test are similar to *Bonnette* factors; in *Layton* v. *DHL Exp. (USA), Inc.,* 686 F.3d 1172, 1176 (11th Cir. 2012), more than half of the factors in its eight-factor test are similar to *Bonnette* factors, and in *Torres-Lopez,* 111 F.3d at 639–40, the court applied factors similar to the *Bonnette* factors but also added eight additional factors for consideration. *See also Zheng* v. *Liberty Apparel Co. Inc.,* 355 F.3d 61, 71 (2d Cir. 2003) (acknowledging that the *Bonnette* factors can be sufficient to establish joint employer status, although a six-factor test with one factor resembling one of the *Bonnette* factors applies if the *Bonnette* factors do not establish joint employer status).[58]

Moreover, these factors are simple, clear-cut, and easy to apply. One of the most prevalent themes among the comments from employer representatives was the great need for clarity and consistency in this area of the FLSA. The Department believes that the greater the number of factors in a multi-factor test, the more complex and difficult the analysis may be in any given case, and the greater the likelihood of inconsistent results in other similar cases. By using factors that focus on the exercise of control over the most essential and common terms and conditions of employment, the Department believes its proposed test will assist stakeholders, as well as courts, in determining FLSA joint employer status with greater ease and consistency. This simplicity will provide greater certainty to both employers and workers as to who is and is not a joint employer under the Act, before any investigation or litigation begins.

Regarding the first factor specifically, the Department is adopting the factor considering whether the potential joint employer hires or fires the employee as proposed. The Department also adopts the third factor as proposed.

Regarding the second factor, supervision and control over schedules or conditions of employment to a substantial degree, the Department believes that the majority of existing legal precedent does not support commenters' suggestion to limit supervision to a day-to-day basis to indicate joint employer status. Circuit courts articulate different tests, but they all agree that only supervision of a sufficient degree is indicative of joint employer status.[59] For example, under the Third Circuit's joint employer test, supervision is one probative factor in favor of finding joint employer status to the extent it constitutes ''day-to-day'' involvement.[60] While several courts outside of the Third Circuit have rejected a finding of joint employer status after noting the lack of day-to-day supervision, those courts did not explicitly hold that day-to-day supervision was necessary for joint employer liability.[61] The Department

[57] Two older Fifth Circuit decisions applied a different test to determine whether an entity was a joint employer under the Act, and the Fifth Circuit has not yet overruled those decisions—creating some uncertainty about what joint employer test applies in the Fifth Circuit. *See Hodgson* v. *Griffin & Brand of McAllen, Inc.,* 471 F.2d 235, 237–38 (5th Cir. 1973); *Wirtz* v. *Lone Star Steel Co.,* 405 F.2d 668, 669–70 (5th Cir. 1968).

[58] The Second and Fourth Circuits rejected the *Bonnette* test as the only test and the test, respectively, because they did not believe it could be reconciled with the broad ''suffer or permit'' standard of the Act. Because, however, the Department believes that section 3(d), not section 3(g), is the touchstone for joint employer status, a *Bonnette*-based four-factor balancing test is preferable and consistent with the text of that statutory provision.

[59] *Salinas,* 848 F.3d at 150 (noting that the putative joint employer ''went beyond double-checking to verify that the task was done properly,'' amounting to ''extensive supervision . . . indicative of an employment relationship, rather than an assessment of compliance with contractual quality and timeliness standards'' (citations and some punctuation omitted)); *Zheng,* 355 F.3d at 74–75 (''Although *Rutherford* indicates that a defendant's extensive supervision of a plaintiff's work is indicative of an employment relationship, *Rutherford* indicates also that such extensive supervision weighs in favor of joint employment only if it demonstrates effective control of the terms and conditions of the plaintiff's employment.'' (citations omitted)); *Layton,* 686 F.3d at 1179 (''[I]nfrequent assertions of minimal oversight do not constitute the requisite degree of supervision.'' (citation omitted)); *In re Enter.,* 683 F.3d 462, 468 (3d Cir. 2012) (requiring ''involvement in day-to-day employee supervision'').

[60] *In re Enter.,* 683 F.3d at 469.

[61] *See, e.g., Johnson* v. *Serenity Transp., Inc.,* 141 F. Supp. 3d 974, 992 (N.D. Cal. 2015) (finding against joint employer status where, ''for example, there are no allegations here that the Customer Defendants were involved in day-to-day oversight of driver's work''); *Hugee* v. *SJC Grp., Inc.,* No. 13 Civ. 0423(GBD), 2013 WL 4399226, at *6 (S.D.N.Y. Aug. 14, 2013) (''In the economic realities test, the pertinent inquiry is whether the purported joint employer exercised control over the employee's day-to-day conditions of employment.'' (quotation

Continued

notes that a ''day to day'' analysis may be a reasonable means to distinguish between ''extensive supervision [that] . . . is indicative of an employment relationship'' and limited supervision that ''has no bearing on the joint employment inquiry,'' such as ''supervision with respect to contractual warranties of quality and time of deliver'' and other ''supervision [that] is perfectly consistent with a typical, legitimate subcontracting arrangement.'' [62] Nonetheless, a general point of agreement among courts is that only substantial supervision is indicative of joint employer status. Accordingly, the Department is revising § 791.2(a)(1)(ii) to state: ''Supervises and controls the employee's work schedule or conditions of employment to a substantial degree.''

Additionally, in response to comments received, the Department is modifying the regulatory language in § 791.2(a)(3), discussed *infra,* to explain that evidence of a right to control regarding the first, second, and third factors may have some relevance to a joint employer analysis.

Given the breadth of comments addressing the maintenance of employment records, the Department agrees this fourth factor needs additional clarification. Courts have frequently looked to maintenance of employment records as one of many factors appropriate for consideration in determining potential joint employer status.[63] As such, the Department declines commenter requests to delete the fourth factor. However, courts have not found joint employer status when maintenance of employment records is the only evidence to support such a finding.[64] In line with case law and Department practice, the Department has added regulatory language clarifying that, although the maintenance of employment records is a relevant factor, satisfaction of the fourth factor alone cannot lead to a finding of joint employer status. The Department is also adding regulatory language narrowing the scope of ''employment records'' to those records, such as payroll records, that reflect, relate to, or otherwise record information pertaining to the first three factors (*i.e.,* hiring or firing, supervision and control of the work schedules or conditions of employment, or determining the rate and method of payment). Further, unless they are part of any of the above categories, records maintained by the potential joint employer related to the employer's compliance with contractual agreements identified in sections (d)(3) and (4) of this final rule as not making joint employer status more or less likely under the Act are not employment records for purposes of the fourth factor.

For all of the foregoing reasons, the Department adopts § 791.2(a)(1) as proposed, but has added a new paragraph codified at § 791.2(a)(2) providing guidance regarding application of the fourth factor.

2. Application of the Four-Factor Balancing Test

In addition to comments regarding the NPRM's proposed factors, the Department also received comments addressing how those factors should be applied or analyzed. In the proposed rule, the Department explained that the four factors comprised a balancing test, and that the factors were intended to focus on the economic realities of the potential joint employer's exercise of control over the terms and conditions of the employee's work.

The proposed regulatory text (§ 791.2(a)(2) of the NPRM) explained that the potential joint employer must actually exercise one or more indicia of control (either directly or indirectly) in order to be jointly liable, and the potential joint employer's power or reserved contractual right to exercise a form of control over the employee is not relevant to the analysis. The text also stated that no one factor of the joint employer test is dispositive; rather, whether a person is a joint employer depends on an evaluation of all the facts in a given case, and the weight given to each factor will vary depending on the circumstances of a particular case.

The NPRM's preamble explained that the Department was proposing a four-factor balancing test, which would weigh the potential joint employer's exercise of control over the terms and conditions of the employee's work. The Department further explained that the four proposed factors were intended to weigh the economic reality of the potential joint employer's active control, direct or indirect, over the employee.

Commenters questioned certain aspects of how the factors should be considered or analyzed. For example, the National Association of Truckstop Operators requested that the Department ''clarify that all four factors of the test must be met to indicate joint employment.'' *See also* Society of Independent Gasoline Manufacturers of America (''In the final rule, the Department should clarify that whether a person is a joint employer under FLSA depends on whether all four factors of the test have been met given the totality of circumstances.'') Seyfarth Shaw expressed concern that the proposed regulatory language could ''be misconstrued by enforcement personnel or courts to suggest that any single factor . . . could suffice to confer joint employer status.''

The Department also received numerous comments from both employer and employee representatives regarding the proposed regulatory language stating that the ''potential joint employer's ability, power, or reserved contractual right to act in relation to the employee is not relevant for determining joint employer status.''

Employer representatives praised the requirement of an actual exercise of control, and applauded the proposal's statement that reserved rights to control should not be considered relevant to the analysis. The National Retail Federation commented that it ''strongly agrees with the Department's view that reserved but unexercised control should not affect joint employer status.'' The Coalition for a Democratic Workforce noted that the emphasis on the actual exercise of control ''is also consistent with Section 3(d) of the Act.'' *See also* Retail Industry Leaders Association (''This modification is consistent with the FLSA's statutory admonition that a person or entity must ''act[ ]'' in the interest of an employer in relation to an employee to be an employer under the FLSA.'') (citation omitted).

Employer representatives also appreciated that the requirement of active control would be ''similar to the test proposed by the National Labor Relations Board . . . related to the National Labor Relations Act . . . which would provide more uniformity among federal employment laws.'' *See* CDW. Similarly, the National Federation of Independent Business also ''welcomed'' the Department's proposal and commented that the proposed language ''harmonizes with the NLRB's pending proposal'' and as such, ''[s]mall and independent businesses would benefit significantly from having the joint employer doctrines of both the Department of Labor under the FLSA and of the National Labor Relations Board under the NLRA recognize that what a putative joint employer actually

marks omitted)); *Zampos* v. *W & E Commc'ns, Inc.,* 970 F. Supp. 2d 794, 806 (N.D. Ill. 2013) (''Relevant factors in determining whether a joint-employer relationship exists include . . . actual day-to-day supervision and direction of employees on the job.''); *Jean-Louis* v. *Metro. Cable Commc'ns, Inc.,* 838 F. Supp. 2d 111, 127 (S.D.N.Y. 2011) (finding no joint employer status where the ''evidence does not show that Time Warner controls the day-to-day manner in which technicians provide . . . service'').

[62] *Zheng,* 355 F.3d at 75.

[63] *See, e.g., Bonnette,* 704 F.2d at 1470.

[64] *See Maddock* v. *KB Homes, Inc.,* 631 F. Supp. 2d 1226, 1234 (C.D. Cal. 2007); *Beck* v. *Boce Group, L.C.,* 391 F. Supp. 2d 1183, 1191 (S.D. Fla. 2005).

does, and not what it theoretically could do, determines whether or not it has joint employer status with respect to an employee.''

SHRM commented that the proposal would be very helpful in clarifying employer obligations, because ''actual exercise of power demonstrates control with a clarity that latent power can never achieve. By focusing on the actual exercise of power, the Department allows businesses to understand their FLSA obligations without worrying that the existence of boilerplate reservations of rights (*e.g.,* to terminate an employee of a staffing agency) or similar rarely-or-never-used contractual provisions might unexpectedly trigger overtime obligations for a group of workers who were never anticipated to be employees (of the secondary employer).'' The U.S. Chamber of Commerce also supported the requirement for active exercise of control because, among other things, it is ''consistent with the Rule's statement that the facts of the relationship between the employee and employer, rather than the structure of the relationship between cooperating businesses, should govern.'' The Chamber explained that routine contractual reservations of control, such as contractual clauses that require contractors or business partners to meet certain goals and enforce certain criteria regarding their employees, ''are not probative of the relationship between the employer and the putative employee—the touchstone of the joint employer analysis—if the putative employer never exercises such control.''

Employee representatives expressed strong opposition to the elimination of reserved rights of control from the joint employer analysis. Several commenters stated that the proposed elimination of the reserved right to control would be contrary not only to the Act, but also to the common law. The AFL–CIO, relying in part on sections 2 and 220 of the Restatement (Second) of Agency, stated that the common law ''clearly recognizes reserved control as relevant to determining if an employment relationship exists.'' Relatedly, NELP commented that ''[t]he common law test for employment and joint employment does not require control to be exercised, direct, and immediate; only that the proposed joint employer have the right to control how the work is done.'' NELP further observed that the NPRM narrows *Bonnette's* common-law factors to an even narrower test, an interpretation under which ''even many single-company direct employees would not be considered employees, despite the fact that they would be considered employees under the common law agency doctrine.'' Sen. Patty Murray commented that ''[t]he proposal absurdly indicates that the potential joint employer must actually exercise one or more of these factors, directly or indirectly, to be jointly liable under the FLSA'' and stated that the Department's rationale for the proposal had ''no basis in the text of the FLSA, no basis in Supreme Court doctrine or circuit court law, and—as was already established—no basis even in the common law test that Congress purposely rejected in crafting the FLSA.''

The AFL–CIO discussed a number of Supreme Court and circuit court cases recognizing reserved right to control in employment cases, and concluded that ''considering a putative joint employer's right of control relevant to the analysis is mandated by the common law and the Department cannot establish a standard narrower than the common law.'' *See also* NELP (''The DOL has no authority to so restrict settled law.''); SEIU (discussing federal court decisions applying section 3(g) that recognize that a company's right, power or ability to exercise control over an individuals' wages, hours and/or working conditions is relevant to determining if the company employs that worker). Greater Boston Legal Services commented that ''[h]aving the ability, albeit unrealized, to fire an employee is clearly a mechanism of control over the nature of the relationship between the employee and the putative employer.'' GBLS continued, stating that because the Department's proposal requires actual, exercised control, ''under many conceivable circumstances will result in very different outcomes from cases analyzed under *Baystate,*'' a case upon which the Department relied in the NPRM.

Referring to the Department's 1997 MSPA rulemaking, 62 FR 11739 (Mar. 12, 1997), Southern Migrant Legal Services commented that the proposed regulation ''represents a complete reversal of the Department's position the last time it engaged in rulemaking regarding joint employer status.'' SMLS stated that in that rulemaking, the Department rejected limiting control to an actual exercise of control, and concluded that where an employer retains any right to control the workers or the work, this would constitute control indicative of an employment relationship.

Additionally, several commenters requested that the Department clarify the limits of indirect control. *See* Seyfarth Shaw; RLC & the Association; Coalition for a Democratic Workplace; National Retail Federation; Retail Industry Leaders Association; World Floor Covering Association. For example, Seyfarth Shaw warned that, absent limiting principles, the '''indirectly' modifier could invite litigation in a wide array of circumstances,'' such as where ''a shipping facility indirectly controls a worker's schedule by cutting back on its staffing needs during a slow period, or that it indirectly fires a worker by relaying to the direct employer that the worker violated a rule.'' *See also* RILA (''this modifier could invite litigation whether a particular action by a 'benefited entity' constitutes 'indirect' actual exercise of one of the *Bonnette* factors''). Seyfarth further requested that the Department ''clarify that a benefited entity's legitimate business decision that has *incidental* impact on a worker's employment does not constitute acting indirectly in the interest of the employer.''

Other commenters agreed. *See* RILA; RLC & the Association. RLC & the Association explained their concern regarding indirect control in the context of when a restaurant ''contract[s] out for cleaning services.'' According to these commenters, ''[i]f an individual whom the cleaning services assigns to perform that work does not do a good job, does not show up, is rude to the restaurant's customers, harasses the restaurant's employees or demonstrates other deficiencies, the restaurant must be able to report that to the cleaning service and to ask that someone else be assigned to perform such services. In this context, it is still the cleaning service's decision as to whether to fire the employee or assign him or her to some other account.'' RLC & the Association thus requested that the Department clarify that ''customer preferences and feedback do not constitute [indirect] hiring and firing, and that providing such feedback is not a factor that makes a joint employment relationship more or less likely.''

Upon careful consideration, the Department adopts a modified version of proposed § 791.2(a)(2) in response to the comments received, codified as § 791.2(a)(3) of this final rule. As an initial matter, as a point of clarification, all four factors need not necessarily be satisfied in order for an entity to be deemed a joint employer. The Department made clear in its proposal that, consistent with case law, the four factors represent a balancing test. Moreover, as noted many times by the Department and now embodied in this regulation, whether a person is a joint employer under the Act will depend on how all the facts in a particular case are tied to the factors, and the appropriate

weight to give each factor will vary depending on the circumstances.

In addition, the regulation now makes clear that an actual exercise of control, directly or indirectly, is required for at least one of the factors and is the clearer indication of joint employer status. The regulation also states, however, that a potential joint employer's ability, power, or reserved right to act in relation to the employee may be relevant for determining joint employer status, but such ability, power, or right alone does not demonstrate joint employer status without some actual exercise of control. For example, if a potential joint employer sets the wage rate for an employee and sets his or her weekly work schedule, and there was also evidence that this entity has authority to fire the employee at any time, then this reserved power would be relevant to the analysis and could properly be considered. The regulation also explains that standard contractual language reserving a right to act is alone insufficient for determining joint employer status; there still must be some actual exercise of control.

This more nuanced approach is responsive to comments stating that the Department proposed a regulation narrower than the common law—this is not the Department's intent. This approach is consistent with the type of fact-specific, totality of circumstances analyses required for potential joint employer scenarios, as well as the requirement that no single factor is dispositive in determining joint employer status under the Act. Finally, the Department is removing the reference to ''economic reality'' from § 791.2(a)(3) of the final rule to clarify that the focus of the fact-specific, totality of circumstances analysis that the Department is adopting is to determine joint employer status; ''economic reality'' is an interpretive principle—not the inquiry itself.

The Department agrees with the commenters that the concept of indirect, actual control requires further clarification. As an initial matter, it is necessary to distinguish direct from indirect control in the context of the first joint employer scenario. A potential joint employer may exercise direct control by, for instance, hiring or firing an employee; setting an employee's schedule; or determining an employee's pay. In each case, the inquiry focuses on the relationship between the potential joint employer and the employee. In contrast, indirect control must be exercised through another, intermediary employer. For example, the potential joint employer may exercise indirect control by directing the intermediary employer to fire or hire an employee; set an employee's schedule; or determine an employee's pay. In other words, indirect control refers to control that flows from the potential joint employer through the intermediary employer to the employee.

There are two relevant relationships in determining indirect control. The first relationship is between the intermediary employer and the employee: The intermediary employer must exercise direct control over the employee, *e.g.,* by firing, hiring, setting schedules, or determining pay. The second relationship is between the potential joint employer and the intermediary employer: If the potential joint employer directs the intermediary employer's exercise of control over the employee, indirect control exists. But agreeing to a mere request or recommendation, alone, is not enough for indirect control, but can be indicative in rare circumstances.

When presented with this scenario, many federal court decisions have drawn a sensible distinction between mandatory directions and mere suggestions or requests when analyzing indirect control.[65] For example, the Third Circuit articulated this distinction in *In re Enterprise* and held that such recommendations are not relevant to joint employer status. In that case, Enterprise Holdings lacked the necessary direct control or authority over a subsidiary's assistant managers for joint employer status.[66] The plaintiffs sought to demonstrate joint employer status on the basis of indirect control by arguing that Enterprise Holdings ''functionally held many of these [authority] roles by way of the guidelines and manuals it promulgated to its subsidiaries.'' [67] But the Third Circuit found ''no evidence that Enterprise Holdings, Inc.'s actions at any time amounted to mandatory directions rather than mere recommendations.'' [68] Therefore, ''[i]nasmuch as the adoption of Enterprise Holdings, Inc.'s *suggested* policies and practices was entirely discretionary on the part of the subsidiaries, Enterprise Holdings, Inc. had no more authority over the conditions of the assistant managers' employment than would a third-party consultant who made suggestions for improvements to the subsidiaries' business practices.'' [69] The Third Circuit's reasoning is grounded in common sense: If Enterprise Holdings lacks authority to require a subsidiary to adopt certain employment practices, it could not indirectly require the subsidiary's employee to adopt such practices. Conversely, courts have been willing to find joint employer status based, at least in part, on indirect control where the potential joint employer does have authority to require the intermediary employer to adopt employment policies and practices not related to quality control, legal obligations, or standards to protect the health and safety of the employees or public.[70]

In short, a potential joint employer exercises indirect control over an intermediary employer's employee by issuing ''mandatory directions'' to the intermediary employer. But the potential joint employer's request for an employment action is rarely evidence of indirect control because the intermediary employer has discretion to grant or refuse the request. In rare circumstances, such as when an intermediary employer repeatedly follows without question a potential joint employer's requests regarding employees, it may be inferred that the intermediary employer lacked discretion to refuse those requests, and therefore, indirect control exists.[71]

[65] *See In re Enter.,* 683 F.3d at 470–71; *see also Martin* v. *Sprint United Mgmt.,* 273 F. Supp. 3d 404, 436 (S.D.N.Y. 2017) (recognizing that a putative joint employer's mandatory payments rates would involve the exercise of control over a subcontractors' field agents rate of payment, but that mere suggestions that the subcontractor could ignore would not show control); *Copantitla* v. *Fiskardo Estiatorio, Inc.,* 788 F. Supp. 2d 253, 309 10 (S.D.N.Y. 2011) (weighing against joint employer status where the facts that a putative joint employer ''sometimes makes recommendations on hiring'' but the hirer ''is free to disregard them,'' and there was no other evidence indicating ''that her recommendations played a material role''); *Dixon* v. *Zabka,* No. 3:11–cv–982 (MPS), 2014 WL 6084351, at *11 (D. Conn. Nov. 13, 2014) (''None of this evidence demonstrates that [the putative joint employer] exercised control over . . . wages or method of payment beyond mere suggestions and recommendations. Such evidence is not sufficient to create a genuine issue of fact . . . .'').

[66] *In re Enter.,* 683 F.3d at 471 (''Enterprise Holdings, Inc. had no authority to hire or fire assistant managers, no authority to promulgate work rules or assignments, and no authority to set compensation, benefits, schedules, or rates or methods of payment. Furthermore, Enterprise Holdings, Inc. was not involved in employee supervision or employee discipline, nor did it exercise or maintain any control over employee records.'').

[67] *Id.*

[68] *Id.* at 470.

[69] *Id.*

[70] *See, e.g., Zachary* v. *Rescare Okla.,* 471 F. Supp. 2d 1175, 1177, 1181 (N.D. Okla. 2006) (finding joint employer status where the parent company ''had the authority to exercise control over [the subsidiary's] employment decisions'' and parent's ''executives were actively involved in setting and implementing policies that governed [the subsidiary's employees]'').

[71] Whether and the extent to which a pattern of following recommendations indicates indirect control depends on the circumstances of each case. For instance, blind adherence to repeated

Determining when a potential joint employer's request, recommendation, or suggestion is in effect a mandatory direction can be a complex, fact-specific analysis.

In order to provide clearer guidance, the Department is adding § 791.2(a)(3)(ii) to clarify that ''[i]ndirect control is exercised by the potential joint employer through mandatory directions to another employer that directly controls the employee. But the direct employer's voluntary decision to grant the potential joint employer's request, recommendation, or suggestion does not constitute indirect control that may demonstrate joint employer status. Acts that incidentally impact the employee also do not indicate joint employer status.'' This language directly responds to commenters' concerns that a potential joint employer's complaint concerning a business partner's employee may indicate joint employer status if the business partner thereafter takes action to discipline or terminate the employee.[72] Seyfarth; RLC and the Association. Under § 791.2(a)(2)(ii), the complaint would be at most a strongly worded suggestion, and any actions taken against the employee would not indicate joint employer status because such actions would have been ''entirely discretionary on the part of the'' business partner.[73] The result would be the same with respect to joint employer factors other than firing and hiring. For example, a restaurant could request lower fees from its cleaning contractor, which if agreed to, could impact the wages of the cleaning contractor's employees. But this request would not constitute an exercise of indirect control over the employee's rate of payment because the cleaning service has discretion to lower its employees' wages or not.

recommendations from a company's sole client may indicate the recommendations were actually mandatory directions. But repeatedly following the recommendations of a consulting firm hired to provide advice regarding employment decisions would not indicate indirect control. *See In re Enter.,* 683 F.3d at 471 (noting that ''third-party consultant who made suggestions for improvements to [a client's] business practices'' is an obvious example where joint employer liability would not apply).

[72] The language further responds to commenters' concerns that general business decisions of a potential joint employer that incidentally impact the employees of the entities with whom it contracts or who are its business partners could indicate joint employer status. For instance, a shipping facility that cuts back on its staffing needs during a slow period may incidentally impact the work schedules of its staffing agency's employees, but that general business decision would fall short of control over the employees' work schedules that would indicate joint employer status.

[73] *In re Enter.,* 683 F.3d at 471.

3. Limits on Consideration of Additional Factors

After proposing a four-factor balancing test to determine joint employer status in the first scenario, the proposed rule identified two situations in which additional factors may be considered (§ 791.2(b)) and addressed the role of economic dependence in determining joint employer status (§ 791.2(c)).

i. Considering Additional Factors

The proposed rule (§ 791.2(b)) stated that ''[a]dditional factors may be relevant for determining joint employer status in this scenario, but only if they are indicia of whether the potential joint employer'': (1) Exercises ''significant control over the terms and conditions of the employee's work,'' or (2) otherwise ''act[s] directly or indirectly in the interest of the employer in relation to the employee.'' 84 FR 14059. The NPRM's preamble explained that, ''[b]ecause joint employer status is determined by 3(d) . . . any additional factors must be consistent with the text of 3(d).'' 84 FR 14049. The proposed limitation on additional factors parroting section 3(d) differs from the text of section 3(d) by changing ''an employer'' to ''the employer'' and ''an employee'' to ''the employee.'' *Compare* 29 U.S.C. 203(d) *with* 84 FR 14059. The NPRM's preamble further explained that ''any additional factors indicating 'significant control' are relevant because the potential joint employer's exercise of significant control over the employee's work establishes its joint liability under Section 3(d).'' *Id.* (footnotes omitted) (citing *In re Enter.,* 683 F.3d at 470; *Falk,* 414 U.S. at 195; *Bonnette,* 704 F.2d at 1470).

A few comments expressed explicit support for one or both of the proposed limitations on consideration of additional factors. For example, Independent Association of Franchisees and National Multifamily Housing Council/National Apartment Association ''strongly support'' the proposed limitations. The U.S. Chamber of Commerce suggested that, ''[i]f the answer to the joint employer question is not clear from consideration of [the] four factors, then factfinders can move to . . . consider more general indicia of control.'' The Chamber did not comment on allowing consideration of additional factors indicating whether the potential joint employer otherwise acts directly or indirectly in the interest of the employer in relation to the employee.

Some comments supported the proposed limited consideration of additional factors but requested modifications. For example, SHRM was supportive but stated that any additional factors ''must, in order to ensure consistency both with the four *Bonnette* factors and with the statutory definition of employer under the FLSA, address the *actual* exercise of control,'' and urged the Department in the final rule to ''specifically identify the types of 'additional factors' to be considered'' and to ''articulate that all 'additional factors' to be considered must be consistent with four *Bonnette* factors.'' Similarly, Seyfarth Shaw was supportive but ''wonder[ed] whether the phrase 'additional factors' could lead courts to consider an overly broad range of factors,'' and urged the Department to ''clarify that the factors expressly deemed not relevant in the final rule are never permissible 'additional factors' for consideration'' and that ''additional factors should be considered only if, among other things, they are consistent with the other factors set forth in the rule.'' World Floor Covering Association requested that the Department define ''significant control'' [74] and ''indirect control'' in the context of consideration of additional factors and provided suggested definitions. Washington Legal Foundation requested that the Department not allow consideration of additional factors indicative of whether the joint employer otherwise ''act[s] directly or indirectly in the interest of the employer in relation to the employee.'' According to WLF, ''[t]here is no justification for that alternative basis; if the additional factors do not indicate that [the potential joint employer] is exercising significant control over the terms and conditions of the work of [the employer's] employees, then it is not relevant to the joint-employer determination.'' *See also* Coalition for a Democratic Workplace (suggesting modifications).

Other comments criticized allowing consideration of other factors. For example, FedEx asserted that ''no other factors need be introduced'' and that permitting consideration of additional factors would ''leav[e] the door open for the next generation's patchwork of judge-made tests to emerge.'' FedEx suggested, in the alternative if the final rule allows consideration of additional factors, that the Department clarify that the four factors ''are the most important to any joint employer status analysis under the FLSA,'' that ''any other factor must result from actions that are material to FLSA compliance *and*

[74] The comment used the phrase ''substantial control'' but presumably meant ''significant control'' based on the context.

regular in frequency to the relationship (rather than merely occasional or incidental),'' and that any additional factors ''carry less weight'' than the four factors. Society of Independent Gasoline Marketers of America requested that the Department ''remove'' or ''drastically revise'' the provision allowing limited consideration of additional factors because it will ''undercut'' the clarity that the proposal would otherwise provide, ''will inject significant uncertainty into any joint employment analysis (exactly what the Department is looking to do away with here),'' and ''will likely increase the instances of joint employment litigation.'' RLC & the Association ''recommend[ed] that no broad catch-alls be added'' and was ''concerned that having an 'additional factors' aspect to the balancing test has the potential to open the floodgates, particularly because the terms 'significant control' and 'acting directly or indirectly' could be broadly construed.'' [75] National Association of Professional Employer Organizations characterized the proposed limits on considering additional factors as an ''alternative,'' ''catch-all'' test that would ''create[ ] a much broader analysis for joint employment than is currently recognized by either USDOL or federal courts analyzing the FLSA,'' and requested that this alternative test be removed or rewritten. NAPEO expressed particular concerns that there is ''no explanation of ''otherwise acting directly or indirectly in the interest of the employer in relation to the employee,'' that ''a fair interpretation is that this language is at least as broad as the 'not completely disassociated' language currently in the regulations,'' and that ''[t]his language creates an end around argument to apply joint employment in almost any situation.'' The National Association of Convenience Stores expressed nearly identical concerns.

A number of comments challenged the proposed limitations, arguing that they were too narrow and lacked any legal basis. For example, NELA asserted that the proposed limitations ''contravene[ ] the fundamental principle that the Supreme Court articulated in *Rutherford Food*—that 'the determination of the [employment] relationship does not depend on . . . isolated factors but rather upon the circumstances of the whole activity' '' (alterations made by commenter). NELA further asserted that ''[c]ourts have relied on this principle for decades in determining joint employer status'' (citing, *e.g., Bonnette,* 704 F.2d at 1470; *Salinas,* 848 F.3d at 142; *In re Enter.,* 683 F.3d at 469; *Zheng,* 355 F.3d at 71–72).[76] Senator Murray argued that the Department's reliance on *Falk* and *Bonnette* to support the proposed limitations is misplaced.[77]

In addition, the Coalition of State AGs contended that the proposed limitations on consideration of additional factors ''preclude[ ] consideration of categories of relevant evidence'' and are ''based on a misreading of *Bonnette.*'' As explained by the Coalition of State AGs, the court in *Bonnette* acknowledged that, although its four factors ''provide a useful framework for analysis in this case, . . . they are not etched in stone and will not be blindly applied. The ultimate determination must be based 'upon the circumstances of the whole activity.' '' *Bonnette,* 704 F.2d at 1470 (quoting *Rutherford Food,* 331 U.S. at 730). Finally, SEIU stated that the proposed limitations on considering additional factors are, like the proposed four-factor test, ''hopelessly flawed as a matter of law'' because they too exclude section 3(g)'s definition of ''employ'' from the analysis (citing *Rutherford Food*), and that the proposed limited consideration of additional factors does not ''redeem'' the proposed rule.

After careful consideration of the comments, the Department adopts the text of § 791.2(b)(1)—which permits consideration of additional factors indicating whether the potential joint employer is ''[e]xercising significant control over the terms and conditions of the employee's work''—as proposed. But the Department is eliminating § 791.2(b)(2), which permits consideration of additional factors indicating whether the potential joint employer is ''acting directly or indirectly in the interest of the employer in relation to the employee.''

As discussed above, the Department is adopting a four-factor balancing test to determine joint employer status under the Act in the first scenario. Courts that apply multi-factor balancing tests leave open the possibility of considering other factors. *See, e.g., Bonnette,* 704 F.2d at 1470 (''The four factors . . . provide a useful framework for analysis in this case, but they are not etched in stone and will not be blindly applied. The ultimate determination must be based 'upon the circumstances of the whole activity.' '') (quoting *Rutherford,* 331 U.S. at 730); *In re Enter.,* 683 F.3d at 469 (''We emphasize, however, that these factors *do not constitute an exhaustive list* of all potentially relevant facts, and should not be 'blindly applied.' A determination as to whether a defendant is a joint employer 'must be based on a consideration of the total employment situation and the economic realities of the work relationship.' '') (quoting *Bonnette,* 704 F.2d at 1470) (emphasis in original) (internal citation omitted); *Baystate,* 163 F.3d at 675 (finding the factors used in *Bonnette* to ''provide a useful framework''); *Wirtz,* 405 F.2d at 669–70 (''In considering whether a person or corporation is an 'employer' or 'joint employer', the total employment situation should be considered with particular regard to the following [five factors].''). There is no basis for the Department to depart from this legal precedent of allowing the consideration of additional factors.

However, there must be limits on the consideration of additional factors when determining joint employer status, and the Department's limits under proposed § 791.2(b)(1) are reasonable. Because evaluating control of the employment relationship by the potential joint employer over the employee is the purpose of the Department's four-factor balancing test, it is sensible to limit the consideration of additional factors to those that indicate control. This limit is supported by the Third Circuit's decision in *In re Enterprise,* which recognized that ''other indicia of 'significant control' '' beyond the four factors that it enumerated may be relevant to determining joint employer status under the Act. 683 F.3d at 470. Accordingly, the Department's final rule adopts proposed § 791.2(b)(1), which allows for consideration of additional factors that indicate whether the potential joint employer has ''significant control over the terms and conditions of the employee's work.'' In response to comments asking about the interplay between this limit and the second factor of the Department's test (which assesses whether the potential joint employer

[75] National Restaurant Association added, in the alternative: ''To the extent additional factors are considered, they should be applied with caution, and it is crucial that the DOL identify in greater detail examples of business practices that should *not* be given any weight as part of the balancing test.''

[76] To the extent that the Department retains the proposed limitations in the final rule, NELA suggested many revisions.

[77] Specifically, Senator Murray argued: ''The Department attempts to cite to *Bonnette* and *Falk* to justify narrowing the possible review of additional factors to those that indicate 'significant control,' but these cases do not support that proposition. In neither case did the courts limit the factors that could be considered in making a joint employment determination—nor did they hold or lend credence to a view that only factors indicating 'significant control' were to be considered. In fact, the Department can cite to no portion of either holding that expresses this view. Rather, the Department cites generally to language in the holdings that state the employers had 'substantial control' and 'considerable control' without holding that those are the minimums to be met for any case of joint employment to be found.''

''controls the employee's . . . conditions of employment to a substantial degree''), ''significant control over the terms and conditions of the employee's work'' must include something more than control over the employee's ''conditions of employment'' or the limit would be superfluous. Thus, ''terms and conditions of the employee's work'' may include aspects of the potential joint employer's relationship with the employee that are not encompassed when applying the second factor and looking at the ''conditions of employment''—but only if the additional aspect indicates significant control by the potential joint employer. For instance, the second factor is limited to supervision and control to a substantial degree of an employee's work schedule or work conditions. But in certain situations—for example, where an employee performs substantial remote work without opportunity for oversight—less supervision and control may constitute an indicator of significant control.

Proposed § 791.2(b)(2), however, does not provide meaningful limitation on the consideration of additional factors that do not indicate control because it simply repeats verbatim section 3(d) of the FLSA. And any future attempt by the Department to identify specific additional factors which fall within § 791.2(b)(2) through sub-regulatory guidance would be ineffective because the Department ''does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 257 (2006) (declining to defer to agency interpretation of ''a parroting regulation''). Accordingly, the Department is not adopting proposed § 791.2(b)(2) in this final rule.

Economic Dependence

The proposed rule § 791.2(c)) stated that ''[w]hether the employee is economically dependent on the potential joint employer is not relevant for determining the potential joint employer's liability under the Act.'' 84 FR 14059. It further stated that ''no factors should be used to assess economic dependence'' when determining joint employer status, and identified examples of ''factors that are not relevant because they assess economic dependence'' as including whether the employee: (1) ''[i]s in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight''; (2) ''[h]as the opportunity for profit or loss based on his or her managerial skill''; and (3) ''[i]nvests in equipment or materials required for work or the employment of helpers.'' *Id.*

The NPRM's preamble explained that, because under section 3(d) joint employer status is determined by the actions of the potential joint employer and not by the actions of the employee or his or her employer, any factors that focus on the actions of the employee or his or her employer are not relevant to the joint employer inquiry, including those focusing on the employee's ''economic dependence.'' 84 FR 14050. The NPRM's preamble stated that the three economic dependence factors identified as not relevant focus on whether the employee is correctly classified as such under the Act—and not on whether the potential joint employer is acting in the interest of the employer in relation to the employee. *Id.* While courts have used these factors for determining whether a worker is an employee or independent contractor, they are not relevant for determining whether additional persons are jointly liable under the Act to a worker whose classification as an employee has already been established. *Id.* In support, the NPRM's preamble cited the Eleventh Circuit's exclusion in *Layton,* 686 F.3d at 1176, of two of the three factors as not relevant to the joint employer inquiry. *Id.* It further stated that courts have found that the ''usefulness'' of the traditional employment relationship test—which includes factors such as the skill required, opportunity for profit or loss, and investment in the business—is ''significantly limited'' in a joint employer case where the employee already has an employer and the question is whether an additional person is jointly liable with the employer for the employee. *Id.* (quoting *Baystate,* 163 F.3d at 675 n.9).

Numerous comments expressed general support for excluding economic dependence as irrelevant when determining joint employer status. *See, e.g.,* American Bakers Association (factors that are used to determine whether a worker is an employee or an independent contractor ''certainly are less relevant in a setting in which the worker has an acknowledged relationship with an employing entity''); Associated Builders and Contractors (agreeing that '' 'economic dependence' on the potential joint employer should not determine the potential joint employer's liability'' and ''particularly support[ing] the three examples of 'economic dependence' factors that the Department proposes to exclude from the joint employer analysis''); International Franchise Association (''strongly agree[ing] with the Department's rejection of [a standard] stating or implying that anyone who is 'economically dependent' on another employer somehow becomes that employer's employee). Center for Workplace Compliance noted that, ''[u]nfortunately, some authorities have found economic dependence to be relevant or even controlling in joint employment cases,'' but asserted that a ''sound textualist reasoning'' of section 3(d) shows that the employee's economic dependence is not relevant to the joint employer inquiry. Seyfarth Shaw likewise agreed that ''factors bearing on a worker's 'economic dependence' relate to whether the worker is an 'employee' under the FLSA and are not germane to the joint employment inquiry,'' and it suggested five additional economic dependence factors to identify as irrelevant for determining joint employer status. *See also* RILA (suggesting exclusion of the same five factors); SHRM (suggesting exclusion of three similar factors).[78]

Numerous comments disputed the Department's legal basis for excluding economic dependence from the joint employer analysis. For example, Senator Murray explained that ''economic dependence is not only central to the analysis of whether the joint employment standard is met in a particular instance, it is the crux of the standard,'' and that ''[i]t defies logic to propose to ignore an employee's economic dependence on the potential joint employer in determining whether the potential joint employer satisfies the joint employer standard.'' Quoting *Layton,* 686 F.3d at 1177–78, and *Baystate,* 163 F.3d at 675, she claimed that ''even those cases the Department cites recognize the centrality of economic dependence to the inquiry.'' Greater Boston Legal Services similarly challenged the NPRM's reliance on

[78] Seyfarth Shaw suggested excluding: (1) The percentage or amount of the direct employer's income that is derived from its relationship with the putative joint employer; (2) The percentage or amount of an employee's income that is derived from assignment to perform work for a particular benefitted entity; (3) The number of contractual relationships, other than with the putative joint employer, that the direct employer has entered into to provide similar services; (4) The length of the relationship between the direct employer or its employees and the putative joint employer; and (5) The number of contractual relationships, other than with the direct employer, that the benefitted party has entered into to receive similar services. SHRM suggested excluding: (1) The percentage or amount of the direct employer's income that is derived from its relationship with the putative joint employer; (2) The length of the relationship between the direct employer or its employees and putative joint employer; and (3) The number of contractual relationships that one party has with other parties to provide or receive similar services.

Baystate, argued that the NPRM was ''selective in its *Baystate* quotations,'' and concluded that the NPRM ''therefore obfuscate[ed] the actual details of *Baystate* to narrow the joint employer standard when instead the Department's Proposed Rule directly contradicts *Baystate* itself.'' NELA asserted that ''[c]ourts have routinely found factors related to economic dependence useful and relevant in their analysis of joint employment.'' Moreover, Farmworker Justice asserted that, by eliminating economic dependence from the joint employer inquiry, the Department is ''rejecting an aspect of the inquiry that courts have used for decades'' (citing cases). Farmworker Justice further asserted that it would be ''remarkably inappropriate'' for the Department to eliminate from the inquiry ''several important factors that are commonly used to apply the FLSA test,'' and especially whether the worker is in a specialty job given that *Rutherford Food* considered that factor. *See also* SEIU (describing as ''wholly illogical'' the notion that ''simply because the stated circumstance would be relevant to a determination whether an individual is an employee or an independent contractor, that circumstance could not also be relevant to a determination whether that same individual is jointly employed by a second employer''). Nichols Kaster suggested an internal inconsistency in the Department's proposal because the economic dependence factors that it excludes may be relevant to showing control. ''[E]conomic dependence factors such as who provides the materials and whether the work was performed on the alleged employer's premises should not be precluded from the analysis as the Department suggests. They could be highly relevant evidence of control or the power to control.'' NELA agreed, stating that ''the fact that a person worked on the premises of a company and that the company provided them with equipment and materials to do their job . . . may make it more likely than not the company is directly or indirectly controlling the working conditions'' (citing *Zheng,* 355 F.3d at 72; *Rutherford Food,* 331 U.S. at 730).

Having reviewed and considered the comments, the Department adopts its proposed analysis of the role of economic dependence in determining joint employer status under the Act and makes one change to the text of § 791.2(c) in the final rule to add a fourth example of ''factors that are not relevant because they assess economic dependence.''

Consistent with the Department's bifurcation of sections 3(e) and (g) to determine whether a worker is an employee under the Act and section 3(d) to determine whether additional persons are joint employers of an employee, economic dependence is indicative of a worker's status as an employee or not, but not indicative of whether an employee has a joint employer. Economic dependence as compared to the degree to which the worker is in business for himself or herself determines whether the worker is an employee under the Act or an independent contractor. *See Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 379 80 (5th Cir. 2019); *Brock* v. *Mr. W Fireworks, Inc.,* 814 F.2d 1042, 1043 (5th Cir. 1987) (noting that the multiple factors of the test that distinguishes between employees and independent contractors ''must always be aimed at an assessment of the 'economic dependence' of the putative employees, the touchstone for this totality of the circumstances test.''); *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (''The [multiple factors of the test that distinguishes between employees and independent contractors] are aids—tools to be used to gauge the degree of dependence of alleged employees on the business with which they are connected. It is dependence that indicates employee status. Each test must be applied with that ultimate notion in mind.''). Thus, a worker who is an employee is necessarily economically dependent on the employer with regard to the work. When determining whether that employee has another person who is a joint employer for the work, considering the employee's economic dependence as well will only lead to a false positive and will not be indicative. The typical laborer working drywall on a construction site, the typical staffing company employee sent to a client, and the typical driver driving a company vehicle, by virtue of their employee status, are not exercising special skill, initiative, judgment, or foresight, do not have the opportunity for profit or loss based on their managerial skill, and are not investing in equipment or materials required for work or employing helpers (notwithstanding any technical skills that they may have). Considering such economic dependence factors as part of a joint employer analysis would focus on the employee's own status, would almost always suggest economic dependence when the worker is already employed by an employer for the work, and would not be helpful in determining whether the other person is also the employee's ''employer'' (*i.e.,* a joint employer) for the work. *Cf. Layton,* 686 F.3d at 1176 (''Because it had been determined that the farm workers were employees of the contractor, there was no need to evaluate whether hallmarks of an independent-contractor relationship existed.'') (citing *Aimable* v. *Long & Scott Farms,* 20 F.3d 434, 443–44 (11th Cir. 1994)). Thus, determining whether the other person is the employee's joint employer necessitates looking beyond the employee's own economic dependence, looking at the relationship between the employee and the other person, and resolving whether that other person is the employee's employer too. The Department's proposed four-factor balancing test does exactly that, and accordingly, economic dependence should not be considered.

Finally, the Department believes that the three examples of ''factors that are not relevant because they assess economic dependence'' identified in proposed § 791.2(c) strike an appropriate balance and that identifying many additional factors in the text of the final rule is not warranted. Nonetheless, although the additional factors suggested by Seyfarth Shaw and others are not part of courts' economic dependence analysis when determining whether a worker is an employee or independent contractor under the Act, the Department is of the view that one of the suggested factors—the number of contractual relationships, other than with the employer, that the potential joint employer has entered into to receive similar services—is not encompassed by the joint employer test that the Department is adopting for the first scenario. Specifically, this suggested factor is not relevant to the four-factor balancing test that the Department is adopting and does not otherwise indicate that the potential joint employer is exercising significant control. Whether a business needs only one vendor or supplier or many to provide a particular product or service at a time does not indicate whether that business is exercising significant control over the employees of any particular vendor or supplier. The Department is therefore adding this factor to the list of irrelevant factors in § 791.2(c).

On the other hand, the Department believes that the other suggested factors may sometimes touch on whether the potential joint employer is exercising significant control,[79] and thus may

[79] The other suggested factors include: (1) The percentage or amount of the direct employer's income that is derived from its relationship with

indicate that the potential joint employer is acting directly or indirectly in the interest of an employer in relation to an employee.

4. Joint Employer May Be Any Person

Because section 3(d) defines ''employer'' as ''any *person* acting directly or indirectly in the interest of an employer in relation to an employee,'' the Department proposed adding in § 791.2(d)(1) the Act's definition of ''person'' in section 3(a) to make it clear that a joint employer under section 3(d) broadly encompasses every kind of person contemplated by the Act. NELA commented that the full definition of ''employer'' in section 3(d) states that an employer includes '' 'any person acting directly or indirectly in the interest of an employer in relation to an employee' '' and includes a public agency, but does not include ''any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization'' (quoting section 3(d)). NELA expressed concern that by mirroring the language in section 3(a) that defines person without putting it in the context of the complete definition of employer as found in section 3(d), the proposed section could read as excluding public agencies from the definition of joint employer, and impermissibly including labor organizations, even when not acting as an employer. After reviewing this comment, the Department acknowledges that the full definition of employer in section 3(d) is applicable to a joint employer. The definition of ''person'' from section 3(a) was incorporated into proposed § 791.2(d)(1) to clarify that the joint employer concept includes every kind of person contemplated by the Act, and was not intended to alter the definition of what type of entity could be considered a joint employer. Accordingly, the Department has incorporated into § 791.2(d)(1) additional language from section 3(d) of the Act to ensure that the definition of person in this section is read within that context.

5. Business Models, Contractual Provisions, and Business Practices That Do Not Make Joint Employer Status More or Less Likely

In the NPRM, the Department proposed to clarify that a person's business model—for example, operating as a franchisor—does not make joint employer status more or less likely under the Act, because a person's business model does not indicate whether it is ''acting . . . in relation to'' an employee of an employer. 84 FR 14051. The Department also proposed excluding as irrelevant to the joint employer inquiry certain contractual provisions intended to encourage legal compliance or promote desired societal effects, such as provisions requiring an employer to institute workplace safety practices, sexual harassment policies, wage floors, morality clauses, or other provisions encouraging the employer's compliance with their legal obligations. To the extent that a business merely requires the employer to institute such general policies, and does not itself enforce the contractual provisions with respect to the workers, the Department proposed that such contractual provisions do not make joint employer status more or less likely. *See id.* Similarly, the Department proposed clarifying that certain business practices where a potential joint employer merely provides or shares resources or benefits with an employer—such as providing sample handbooks or other forms to the employer, allowing an employer to operate a facility on its premises, offering an association health or retirement plan to the employer or participating in such a plan with the employer, or jointly participating with an employer in an apprenticeship program—do not make joint employer status more or less likely. *Id.* The Department explained that merely providing or sharing the resources or benefits, in the absence of any action by a potential joint employer to control the use of the resources or benefits by the employer's employees, does not constitute ''acting . . . in relation to'' the employees. *Id.*

Many employer representatives supported the proposals described above, agreeing that such business interactions do not involve exercising control over the employees or otherwise acting directly or indirectly or indirectly in the interest of an employer to an employee. *See, e.g.,* American Hotel and Lodging Association; Center for Workplace Compliance; Coalition for a Democratic Workplace; International Franchise Association; RLC & the Association; Retail Industry Leaders Association; Society for Human Resource Management; U.S. Chamber of Commerce. Many of these commenters asserted that this proposed language would provide additional clarity and encourage mutually beneficial business relationships that would ultimately also benefit workers by allowing larger businesses to provide guidance, resources, and best practices to smaller businesses without inadvertently risking joint employer liability. *See, e.g.,* American Hotel and Lodging Association; Coalition for a Democratic Workplace; Society for Human Resource Management; U.S. Chamber of Commerce. Several other commenters, including the American Hotel and Lodging Association, HR Policy Association, Society of Independent Gasoline Marketers of America, and several members of Congress, also noted that these provisions will further encourage businesses to be good corporate citizens by promoting or requiring higher legal or ethical standards in their relationships with other businesses, to take the appropriate steps to ensure the safety of all employees, or to foster safe and informed workplaces.

Although few worker representatives commented specifically on this portion of the NPRM, those that did were unanimously opposed to the proposal to consider these factors as making joint employer status neither more or less likely. *See* AFL–CIO; Center for Law and Social Policy; Greater Boston Legal Services; NELA; United Brotherhood of Carpenters and Joiners of America. These commenters indicated that the proposed provisions would eliminate potentially relevant factors from consideration, as there may be circumstances in which these business models, business practices, or contractual provisions involve the exercise of direct or indirect control over employees' schedules, conditions of employment, rates and methods or payment, or the maintenance of employee records, particularly when considered in light of the totality of the circumstances. Commenters noted that as courts have repeatedly stated, whether a person is a joint employer under the FLSA will depend on all of the facts in a particular case, and they therefore objected that to exclude certain facts, such as business models, contractual agreements, or business practices, as irrelevant in all instances impermissibly prevents those facts from being considered in that broader context. *See* Greater Boston Legal Services (''[T]he Department's proposal shreds the reasoning of *Baystate* as

the putative joint employer; (2) The percentage or amount of an employee's income that is derived from assignment to perform work for a particular benefitted entity; (3) The number of contractual relationships, other than with the putative joint employer, that the direct employer has entered into to provide similar services; and (4) The length of the relationship between the direct employer or its employees and the putative joint employer.

applied in its progeny decisions, explicitly excluding consideration of ways in which a putative employer controls the terms and conditions of work that have been important to courts when deciding joint employer questions.''); AFL–CIO (''The proposed rule departs from the Supreme Court's, the common law's, and its own command by wholly discounting elements of the relationship between the putative joint employers and between the employees and the alleged joint employer.'') These comments were often made in the context of the worker representatives' broader objections to the Department's proposed language indicating that the textual basis under the FLSA for joint employer status is section 3(d), rather than sections 3(e)(1) or 3(g), or objections that the Department's proposed four-factor test is an impermissibly narrow interpretation of joint employer status, as discussed above.

After carefully considering the comments on this issue, the Department has determined that the part 791 regulations should appropriately categorize certain business models, business practices, and contractual provisions as making joint employer status neither more or less likely. As previously discussed, the Department has determined that section 3(d) is the textual basis for joint employer status in the FLSA, and that its four-factor test derived from *Bonnette* is the appropriate analysis for determining joint employer status in situations where a potential joint employer benefits from the work performed by another business' employees. Therefore, the relevance of additional factors should only be considered in the context of whether these factors could potentially indicate that a potential joint employer is ''acting directly or indirectly in the interest of an employer in relation to an employee,'' not whether some other standard or test is being met. However, the business models, business practices, and contractual provisions identified in the NPRM, as revised and finalized here, do not involve a potential joint employer ''acting directly or indirectly in the interest of an employer in relation to an employee.'' Instead, they involve businesses acting in relation to each other to develop or strengthen a mutually beneficial business relationship, improve the work products used in that business relationship, or encourage compliance with legal obligations or health and safety, standards. In any event, for a potential joint employer to use such general business models, practices or contractual provisions to exercise direct or indirect control over another employer's employees, the potential joint employer would have to take some action toward those employees to require or enforce these general practices and policies in relation to those particular employees. In that case, the relevant factor would be that action on the part of the potential joint employer, not the general practice or policy that the potential joint employer imposed on the employees themselves, and the action would be considered in determining the extent to which the potential joint employer acted to exercise control over the employees' terms or conditions of employment.

In addition to generally supporting the proposals identified in proposed § 791.2(d) of the NPRM, many employer representatives requested clarification as to those items or suggested additional business models, contractual agreements, or business practices that should also be identified as not making joint employer status more or less likely. *See, e.g.,* Associated Builders and Contractors; Center for Workplace Compliance; International Franchise Association; RLC & the Association; Seyfarth Shaw; Society for Human Resource Management; U.S. Chamber of Commerce; World Floor Covering Association.

For example, several commenters requested clarification as to whether business models other than the franchise model should also be considered as not making joint employer status more or less likely. The National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America both commented that the brand and supply business model—in which one business agrees to sell another business' products under that business' brand name and comply with certain brand standards and signage requirements, without agreeing to limitations or requirements for other products or services offered—should be identified as not making joint employer status more likely. RLC & the Association also requested clarification as to whether certain features common to various business models, such as establishing a profit-sharing arrangement with a franchisee in lieu of a franchise fee, would make joint employer status more likely. In contrast, the Independent Association of Franchisees requested the Department to clarify that the presence of various economic features found in franchise agreements, including various franchise fees charged or capital expenditures required of the franchisee under the terms of the agreements, would be sufficient to indicate that the franchisor was the employer of the franchisee. Relatedly, the Department received several comments from employer representatives stating that the regulation should specify that certain business practices involving the location and time period during which work is performed do not make joint employer status more or less likely, where those location or timing requirements are dictated by the nature of the work itself. Examples of such requirements that were mentioned in the comments include specifying the location and approximate time period when work is to be performed at a customer's home, requiring certain operating hours or time periods during which services must be provided to customers, or requiring that work be performed in a coordinated schedule with other businesses performing related work where the nature of the work is such that items of work must be completed in a certain order, as on a construction site. *See* Associated Builders and General Contractors, Inc.; Coalition for a Democratic Workplace; International Franchise Association; RLC & the Association; World Floor Covering Association. Commenters felt that these business practices did not involve any control over workers' terms or conditions of employment, but merely represented businesses contracting for the work necessary to meet their specific needs.

In contrast, worker representatives who commented directly or indirectly on this provision felt strongly that business models should not be generally excluded from consideration of joint employer status. AFL–CIO asserted that a putative joint employer's business model is obviously relevant, because it determines the potential joint employer's relationship with the alleged employer and its employees. AFL–CIO further claimed that certain business models, such as temporary staffing agencies, labor supply firms, or franchisors, are empirically more likely to be joint employers. Other commenters, while not specifically addressing this proposed item, noted that business models involving the outsourcing of work increase workers' vulnerability to misclassification and wage theft. *See* NELA (''Permitting consideration of additional factors helps prevent unscrupulous employers from subverting FLSA liability by simply outsourcing direct supervision of workers to labor brokers or staffing agencies.''); Center for Law and Social Policy (''The growing variety and

number of business models and labor arrangements have made joint employment more common.''); United Brotherhood of Carpenters and Joiners of America (''[T]here are employers in the construction industry ready, willing, and able to construct sophisticated labyrinths to confound law enforcement, cheat employees, and make fair competition an uphill battle.'').

The Department has carefully considered the comments on this provision. Although worker representatives may be correct that some business models could be more likely to involve joint employers, other factors remain the true test of whether a particular business using such models is indeed a joint employer. While the Department appreciates concerns regarding the vulnerability of low-wage workers in certain business models, there is nothing inherent in the decision to enter into a brand-and-supply agreement, operate as a franchisor, or use a similar business model that is indicative of joint employer status under the FLSA.[80] Accordingly, the Department maintains its analysis that the franchise business model and other similar business models, such as brand and supply agreements, do not make joint employer status more likely. However, the Department recognizes the validity of commenters' concerns that it is overly broad to state that any business model adopted by a potential joint employer does not make joint employer status more likely, as business models may exist that do involve the exercise of direct or indirect control over workers' conditions of employment. In light of these comments, the Department has decided to modify proposed § 791.2(d)(2) to make it clear that the franchise business model, the brand and supply business model, and other similar business models do not make joint employer status more likely, while still allowing for the possibility that business models could be devised that, unlike these models, would involve the exercise of control over employees' conditions of employment and would thus make joint employer status more likely. Specifically, the Department has revised § 791.2(d)(2) to state that ''[o]perating as a franchisor or entering into a brand and supply agreement, or using a similar business model does not make joint employer status more likely under the Act.''

The Department has also considered commenters' concerns regarding specific features of the business models identified, and agrees that to the extent various features of franchise and other similar business models are merely an economic feature of the business model, such as the use of profit sharing or the eventual hiring of temporary workers, those factors would not affect these business models' lack of relevance to joint employer status, so long as such features do not involve acting directly or indirectly to control the employees. Similarly, the Department agrees that where the location or timing of the work is dictated by the nature or circumstances of the work itself, requiring the supplier, vendor, subcontractor, or other entity who is performing the work to meet those time and location requirements does not make joint employer status either more or less likely. As a general matter, businesses that contract for work to be performed by other entities must of necessity be able to indicate or even mandate the time and place of performance of that work that best meets their business needs, and should be able to do so without incurring joint employer liability.[81] This is particularly true where the work takes place, as in the examples above, in areas that are not under the control of the employer. However, where the work takes place at the potential joint employer's premises, that fact may be relevant to the potential employer's control of working conditions.[82] Likewise, where a potential joint employer does not merely contract for work to take place at the locations and times necessary to achieve their business objectives, but actually acts directly or indirectly to determine how employees' schedules, routes, or other working conditions will be altered or changed so that the potential joint employer's time and location needs can be met, rather than leaving such decisions to the employer's discretion, such actions may still be relevant to an analysis of joint employer status.[83] The determination of whether a potential joint employer has merely contracted for performance of work at certain times or locations as dictated by the nature of the work, as opposed to acting directly or indirectly to exercise control over employees' schedules, routes, or other working conditions will of necessity be a fact-specific determination.

Multiple employer representatives supported the inclusion of § 791.2(d)(3) in the regulatory text, agreeing that contractual agreements requiring an employer to set a wage floor, institute sexual harassment policies, establish workplace safety practices, require morality clauses, adopt similar generalized business practices, or otherwise comply with the law do not make joint employer status either more or less likely. *See, e.g.,* Associated General Contractors of America; Center for Workplace Compliance; Coalition for a Democratic Workforce; HR Policy Association; Retail Industry Leaders Association; Society for Human Resource Management; U.S. Chamber of Commerce. Commenters emphasized that such contractual provisions or business policies allow businesses to positively affect the well-being of consumers and workers by using their influence with suppliers, vendors, franchisees, and other related parties to require enhanced compliance with legal and ethical standards. *See* Association of General Contractors; Center for Workplace Compliance; HR Policy Association. These commenters further noted that such agreements or policies, while often improving conditions for workers across a web of connected businesses, do not constitute acting directly or indirectly in relation to an employee and do not involve the exercise of control over employees' daily activities or conditions of employment.

Although this provision received general support from employer representatives, many of these

[80] *See, e.g., Salazar* v. *McDonald's Corp.,* 939 F.3d 1051, 1056 (9th Cir. 2019) (''McDonald's involvement in its franchises and with workers at the franchises is central to modern franchising and to the company's ability to maintain brand standards, but does not represent control over wages, hours, or working conditions'' such that it is a joint employer under California's wage and hour law), *rehearing denied and opinion amended* (Dec. 11, 2019); *Orozco* v. *Plackis,* 757 F.3d 445, 452 (5th Cir. 2014) (noting that the employee ''concede[d] that the Franchise Agreement is insufficient, by itself, to establish that [franchisor] qualifies as [employee's]'s employer under the FLSA''); *Chen* v. *Domino's Pizza, Inc.,* No. 09–107 (JAP), 2009 WL 3379946, at *3 (D.N.J. Oct. 16, 2009) (collecting cases and noting that ''[c]ourts have consistently held that the franchisor/franchisee relationship does not create an employment relationship between a franchisor and a franchisee's employees'').

[81] *See, e.g., Aimable,* 20 F.3d at 441 (''It is not surprising that [a farm] would (and, despite [the FLSA], should be able to) give general instruction to [a farm labor contractor] as to which crops to harvest at a particular time.''); *Jean-Louis,* 838 F. Supp. 2d at 125–26 (S.D.N.Y. 2011) (finding that providing windows of time in which technicians had to perform cable installation in customers' homes did not constitute supervision or control of employees' work schedules).

[82] *See, e.g., Layton,* 686 F.3d at 1180 (noting that ownership of facilities where the work occurs is relevant to joint employer analysis because a business that owns or controls the worksite will likely be able to prevent labor law violations even if it delegates hiring and supervisory responsibilities to labor contractors).

[83] *See, e.g., id.* at 1179 (finding the fact that the potential joint employer ''communicated with Drivers . . . if a non-routine situation occurred and Drivers were needed to re-deliver a package or respond to a customer complaint . . . evidence[d] a small amount of supervision'').

commenters requested clarification as to the extent of this provision and provided examples of typical contractual agreements or general policies that they felt should fall within its scope. Commenters indicated that the provision should be expanded to make clear that business practices related to the contractual agreements, such as monitoring workplaces for compliance with the legal obligations or policies specified by the contractual agreements, requiring businesses to ensure that workers receive training related to compliance with such legal obligations or policies, requiring background checks for employees, requiring the removal of products that pose a safety hazard, or penalizing businesses that do not comply with the contractual agreements, would also not make joint employer status more or less likely. They also requested that the provision specify that contractual agreements or practices mandating compliance with legal obligations under employment laws such as the FLSA itself or the Davis-Bacon Act fall within the scope of this provision. *See* Associated Builders and Contractors; Center for Workplace Compliance; Coalition for a Democratic Workplace; HR Policy Association; Retail Industry Leaders Association; Society for Human Resource Management; U.S. Chamber of Commerce. Commenters also suggested that the regulatory text be revised to indicate that in addition to the wage floors specifically mentioned in the text, contractual agreements requiring businesses to provide a minimum level of paid leave or other benefits to workers do not make joint employer status more or less likely.

In contrast, worker representatives who commented on this provision indicated that contractual agreements such as setting wage floors, requiring sexual harassment policies, or setting workplace safety standards impermissibly excluded potentially relevant facts from consideration when determining joint employer status. *See* AFL–CIO; NELA; Greater Boston Legal Services. Commenters specifically highlighted that contractually requiring a wage floor can be relevant to consideration of whether a potential joint employer determines employees' rates of pay. *See* United Brotherhood of Carpenters and Joiners (''DOL states that establishing rates of pay indicates joint employer status, but then diminishes its weight if it is included in a contract as a 'wage floor' ''); AFL–CIO (''Setting a wage floor, most obviously, is not a 'generalized business practice' or a requirement that another entity 'comply with the law'. Rather, it is the exercise of control over employees' wages.'')

Having reviewed the commenters' suggestions regarding this provision, the Department recognizes the value of contractual agreements and related business practices that encourage compliance with legal obligations and health or safety standards. Several commenters stated that businesses are increasingly choosing to take on certain responsibilities that are not required by law, but as part of the business' ''corporate social responsibility'' (CSR) initiatives. *See* HR Policy Association (''Many corporations choose to act as good corporate citizens by adopting ethical standards that exceed their legal obligations.''); National Retail Federation; Center for Workplace Compliance. A commenter noted that some of these CSR initiatives include seeking to improve the working conditions for employees throughout the business's supply chain. *See* Center for Workplace Compliance.

Businesses should not be discouraged from entering into and enforcing against other businesses such contractual agreements out of fear that encouraging compliance with health, safety, or legal obligations among their suppliers, vendors, sub-contractors, or franchisees will cause them to be considered joint employers of the employees of these other businesses.[84] Many courts have also recognized that measures to ensure compliance with legal, safety, or other similar obligations are not relevant to determining joint employer status.[85] The Department further agrees with the commenters who stated that businesses that act to monitor or enforce these types of contractual agreements against other businesses are not acting directly or indirectly toward an employee, but are instead acting to preserve the terms of their contractual agreement. Therefore, such monitoring or enforcement against other businesses does not make joint employer status more or less likely, so long as the monitoring and enforcement are focused on the employer's compliance with the contractually agreed upon policies, rather than supervision and control of individual employees' working conditions. The Department has accordingly added to the regulatory text to clarify that this provision applies not only to contractual agreements that require compliance with legal obligations and health or safety standards, but also to monitoring and enforcement against other businesses and similar activities necessary to ensure that the contractual agreements are being fulfilled, and has provided additional examples in the regulatory text to illustrate this principle. The Department is also clarifying that such similar activities include requiring that an employee handbook include standards, policies, or procedures that improve compliance with legal obligations.

After carefully considering commenters' concerns, however, the Department acknowledges that although contractually requiring a wage floor or similar measures will generally not be determinative of joint employer status, there may be situations where such requirements may be relevant to a determination of joint employer status in combination with other factors. Therefore, the Department has deleted the language that it had proposed relating to wage floors from § 791.2(d)(3). The Department has also made a non-substantive change by moving the language regarding the requirement of morality clauses from proposed § 791.2(d)(3) to § 791.2(d)(4), as after further analysis the Department considers that requiring the direct employer to have and enforce morality clauses is more a matter of protecting the potential joint employer's brand reputation than requiring compliance with legal obligations or health and safety standards.

Several employer representatives also commented on how important it is for businesses to be able to require, maintain, and enforce quality standards in relation to the work performed on their behalf or under their brand name. The commenters emphasized that quality control measures are commonly included in a variety of business relationships to allow businesses to enter into mutually beneficial business relationships while still protecting their reputation for quality with their customers, and do not involve any

[84] *See Zhao* v. *Bebe Stores, Inc.,* 247 F. Supp. 2d 1154, 1160–61 (C.D. Cal. 2003) (clothing store's monitoring efforts to ensure garment manufacturer's compliance with anti-sweat shop measures should not be considered when determining joint employer status).

[85] *See, e.g., Moreau* v. *Air France,* 356 F.3d 942, 951 (9th Cir. 2004) (distinguishing strict controls ''to ensure compliance with various safety and security regulations'' for airline passengers as ''qualitatively different from'' oversight that evinced joint employer status in another case); *Zampos,* 970 F. Supp. 2d at 803 (requiring installation contractors to subject applicants to background checks and drug tests does not implicate ''hiring and firing'' factor because ''this purported control, relating to the safety and security of Comcast customers, is qualitatively different from the control exercised by an employer''); *Godlewska* v. *HDA,* 916 F. Supp. 2d 246, 259 60 (E.D.N.Y. 2013), *aff'd sub nom. Godlewska* v. *Human Dev. Ass'n, Inc.,* 561 F. App'x 108 (2d Cir. 2014) (contrasting ''quality control[ ] . . . to ensure compliance with the law or protect clients' safety'' with ''control over the employee's 'day-to-day conditions of employment' [that] is relevant to the joint employment inquiry'').

direct or indirect control of the employees' schedule, pay rates, or conditions of employment. These commenters suggested changes to proposed § 791.2(d)(4) to specify the extent to which potential joint employers can require franchisees, subcontractors, or other entities to comply with quality control standards instituted by the potential joint employer without making joint employer status more likely. Several commenters also provided additional examples of quality control measures that they believe should be included in the regulatory text as examples of business practices that do not make joint employer status more or less likely, such as providing quality or outcome standards, requiring employees to maintain a professional appearance or courteous demeanor with customers, or providing feedback to the employer when work has not been performed in accordance with the required quality standards. *See, e.g.,* Coalition for a Democratic Workplace; International Franchise Association; Retail Industry Leaders Association; Seyfarth Shaw LLP; U.S. Chamber of Commerce. However, the Independent Association of Franchisees commented that the use of certain quality control practices common to franchise agreements, such as requiring franchisees to purchase supplies from certain vendors, should be sufficient to create an employment relationship between the franchisor and franchisee.

The Department agrees with commenters that requiring, monitoring, and enforcing other businesses' compliance with quality control standards to ensure the consistent quality of a work product, brand, or business reputation is not a business practice that makes joint employer status more or less likely. Such quality control measures stem from a business' desire to protect its reputation, protect the quality of the ultimate work product, and ensure that customers continue to receive a high standard of service, and are thus of a very different nature than actions where a potential joint employer acts directly or indirectly in the interest of an employer in relation to an employee. Quality control measures are focused on the goods and services themselves by determining criteria for an acceptable work product or service and evaluating the end work product in light of those criteria, as opposed to actions directed toward day-to-day management of the workers. Many courts have recognized that ''supervision with respect to contractual warranties of quality and time of delivery has no bearing on the joint employment inquiry[.]'' [86] Therefore, businesses are able to require and oversee quality control measures without that fact indicating liability as a joint employer. However, if a potential joint employer engages in supervision and becomes involved with employees' firing or disciplinary actions, scheduling, or other conditions of employment, such actions would of course still be relevant to an inquiry into joint employer status. To address confusion about whether businesses can merely require quality control standards, or whether they can also monitor and enforce those standards against other businesses without that fact indicating joint employer liability, the Department has added regulatory text to § 791.2(d) to clarify that merely requiring quality control standards and ensuring that the work actually meets the required standards does not make joint employer status more or less likely. This additional text will now be § 791.2(d)(4).

Employer representatives also provided feedback supporting the regulatory text identifying certain business practices, such as providing another employer with a sample handbook or forms, allowing an employer to operate a facility on its premises, offering or participating in an association health plan, or participating with an employer in an apprenticeship program as business practices that do not make joint employer status more or less likely. These commenters emphasized that by providing additional resources to employers and their employees, potential joint employers are giving employers access to a greater degree of business expertise, training resources, and benefit plans than they would be able to attain on their own. The commenters stated that by making it clear that such practices were not indicative of joint employer status, the proposed regulatory text will encourage businesses who had become wary of providing such resources to their franchisees, subcontractors, or other entities to continue to make those resources available to the benefit of those employers and their workers. Some commenters provided examples of additional business practices that they felt should also be specifically recognized as not making joint employer status more or less likely. For example, in addition to sample handbooks and forms, several commenters wanted clarification as to whether businesses could also provide or recommend other materials, such as sample operational or business plans, marketing materials, and suggested hiring or interview guidelines. They pointed out that such materials can assist businesses to improve their operating procedures and develop legally compliant workplace policies. *See* RLC & the Association; U.S. Chamber of Commerce; World Floor Covering Association. RLC & the Association asserted that franchisors frequently provide franchisees with a platform to post job advertisements and collect job applications, and often recommend or provide analytical systems and tools to increase efficiency, and stated that these common business practices should also not make joint employer status more or less likely.

Commenters also inquired whether a potential joint employer could provide certain optional resources and benefits to employees without making joint employer status more or less likely. For example, commenters indicated that potential joint employers frequently offer training or educational opportunities to employees, either directly or through a cooperative business group, or allow employees free access to the potential joint employer's common areas, such as the cafeteria, break areas, nursing mother facilities, or company intranet, and they believed that these common practices should not make joint employer status more or less likely. *See* Retail Industry Leaders Association; Society for Human Resource Management; World Floor Covering Association.

Commenters representing employees opposed the proposed identification of business practices considered not indicative of joint employer status. These commenters, including the AFL–CIO, asserted as a general matter that such provisions would be contrary to

[86] *Zheng,* 355 F.3d at 75. *See also Godlewska,* 916 F. Supp. 2d at 260 (''Quality control and compliance monitoring . . . are qualitatively different from control that stems from the nature of the relationship between the employees and the putative employer.'' (quotation marks omitted)); *Jacobson* v. *Comcast Corp.,* 740 F. Supp. 2d 683, 691–92 (D. Md. 2010) (''Comcast's quality control procedures ultimately stem from the nature of their business and the need to provide reliable service to their customers, not the nature of the relationship between the technicians and Comcast . . . . it is qualitatively different from the control exercised by employers over employees.''); *Mendez* v. *Timberwood Carpentry & Restoration,* No. H–9–490, 2009 WL 4825220, at *6 (S.D. Tex. Dec. 9, 2009) (finding that supervisory rights that ''extend only to securing satisfactory completion of the terms of [an]Agreement or [the] quality of the work to be performed . . . ha[ve] no bearing on [an entity's] 'employer' status'') (quotation marks omitted)); *Chen* v. *Street Beat Sportswear,* 364 F. Supp. 2d 269, 286 (E.D.N.Y. 2005) (''The Court will not consider evidence plaintiffs present with respect to [the control] factor to the extent it concerns the presence of Street Beat quality control personnel at the contractors' factories to monitor the quality of the work.''); *Zhao,* 247 F. Supp. 2d at 1160 (finding that performing quality control at factory where employees worked did not constitute the control or supervision typical of an employer).

case law encouraging a holistic evaluation of ''*all* evidence of control of terms and conditions of employment.'' AFL–CIO (emphasis in original); *see also* Greater Boston Legal Services; Low Wage Worker Legal Network; United Brotherhood of Carpenters and Joiners. Several commenters specifically objected to the proposal to exclude from consideration an entity's decision to ''allow[ ] the employer to operate a business on its premises,'' asserting that commenters objected to specific items listed in proposed § 791.2(d)(4). *See* Low Wage Worker Legal Network (''Who owns the property where work is carried out has long been recognized as a significant factor in evaluating employment under the FLSA.''); Nichols Kaster (''[W]hether the work was performed on the alleged employer's premises should not be precluded from the analysis . . . [as it] could be highly relevant evidence of control or the power to control.''). The United Brotherhood of Carpenters and Joiners asserted that proposed § 791.2(d)(4)'s residual exclusion of ''any other similar business practices'' would be ''a clarion call for creative contracting that will shelter contractors who control a labor broker's workforce.''

After carefully reviewing these comments, the Department believes that where one business provides another business with benefits or resources (including allowing it to operate a store-within-a-store), that the other business can use at its discretion, such sharing does not make joint employer status either more or less likely. For example, suggesting methods or providing materials that a franchisee, sub-contractor, or other entity can use to improve their business strategies or profitability does not involve acting directly or indirectly in relation to employees; the potential joint employer provides those suggestions, samples, or resources to the employer, who may then determine how they should be implemented with respect to their own employees. An entity does not become a joint employer merely because another business chooses to follow that entity's business advice.[87] Similarly, providing employees with access to resources or benefits to which they may not otherwise have access, such as optional educational or training opportunities, common areas, or additional benefit plan options, does not involve the exercise of direct or indirect control over employees' terms or conditions of work, whether those resources are provided to the employer or directly to the employees. To make joint employer status more or less likely, the potential joint employer would have to not only provide such resources, but would also have to somehow exercise control over the employees in relation to those resources. For example, if the potential joint employer disciplined a worker for not following certain policies, insisted that the employer hire specific job applicants or required employees to participate in a particular apprenticeship program, the potential joint employer would then be exercising control over the employees' conditions of employment beyond merely making resources available. Therefore, the Department has decided to retain this provision from the proposed rule. The Department has also moved this provision to § 791.2(d)(5) to accommodate the additional text now incorporated at § 791.2(d)(4), described above.

F. Test for Determining Joint Employer Status in the Second Scenario

In the second joint employer scenario, the employee works separate jobs and hours for multiple employers, and the issue is whether the employers are joint employers of the employee such that all of the employee's hours worked for the employers are aggregated for the workweek and the employers are jointly and severally liable for all of the hours worked. Proposed § 791.2(e) stated that, in this scenario, ''if the employers are acting independently of each other and are disassociated with respect to the employment of the employee, each employer may disregard all work performed by the employee for the other employer in determining its own responsibilities under the Act.'' 84 FR 14059. On the other hand, ''if the employers are sufficiently associated with respect to the employment of the employee, they are joint employers and must aggregate the hours worked for each for purposes of determining compliance with the Act.'' *Id.* The proposed rule further stated that the employers ''will generally be sufficiently associated'' if there is ''an arrangement between them to share the employee's services;'' ''[o]ne employer is acting directly or indirectly in the interest of the other employer in relation to the employee;'' or [t]hey share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.'' *Id.* The proposed rule noted that ''[s]uch a determination depends on all of the facts and circumstances'' and that ''[c]ertain business relationships . . . which have little to do with the employment of specific workers—such as sharing a vendor or being franchisees of the same franchisor—are alone insufficient to establish that two employers are sufficiently associated to be joint employers.'' *Id.* As explained in the NPRM's preamble, these proposals would amount to ''non-substantive revisions'' to the current regulations' ''not completely disassociated'' analysis for determining joint employer status in this scenario. 84 FR 14052.

The proposed revisions to the analysis for determining joint employer status in the second scenario did not engender many comments. Several comments asserted that the current regulations' ''not completely associated'' standard is ill-suited for the first joint employer scenario and/or supported application of the proposed ''sufficiently associated'' analysis to the second joint employer scenario. *See, e.g.,* SHRM (supporting the proposal); National Federation of Independent Business (current regulations' standard ''makes sense'' in the second scenario and the proposed revisions preserve much of that standard and would provide a ''properly tailored'' standard for the second scenario); Center for Workplace Compliance (current regulations' focus on the relationship between the two potential joint employers is relevant to the second scenario, but not the first). Two comments agreed that the current regulations' standard is useful for determining joint employer status in the second scenario, but also suggested some ''non-substantive revisions'' to the proposed ''sufficiently associated'' analysis, including a statement that the proposed analysis is ''meant to be in line with past application'' of the current regulations' analysis and affirming that (even in the second scenario) the analysis must focus on whether an employer ''controls the terms and conditions of work utilizing the *Bonnette* factors.'' *See* Seyfarth Shaw; RILA. These comments also asked that the final rule address situations where one employee (for

[87] *See Orozco,* 757 F.3d at 449–51 (holding that there was insufficient evidence to legally find that the potential joint employer supervised and controlled workers' schedules, pay rates, or other conditions of employment, where the potential joint employer advised a franchisee on how to increase profitability, including a review of employees schedules, and the franchisee then adjusted workers' hour and pay, where the decision as to whether or how workers' schedules and pay would be adjusted was still up to the franchisee); *Affo* v. *Granite Bay Care, Inc.,* Nos. 2:11–CV–482–DBH & 2:12–CV–115–DBH, 2013 WL 2383627, at *10 (D. Me. May 30, 2013) (finding that the employer's use of the potential joint employer's staffing model and handbook does not suggest that the potential joint employer exercised control over the employer's workers).

example, a watchman) simultaneously works one set of hours for two related employers. *See id.* Finally, several comments defended the current regulations' ''not completely disassociated'' standard, which would ostensibly govern both scenarios in the view of these commenters. *See, e.g.,* Southern Migrant Legal Services and Washington Lawyers' Committee.

Having carefully considered the comments, the Department continues to be of the view that, in the second joint employer scenario, focusing on the relationship between the two employers is the correct approach. In the second scenario, the employee is employed by both employers and works separate jobs and hours for each employer. To the extent that the two employers are acting as one with respect to the employee, the employees' hours worked for the two employers should be treated as one set of hours worked. As explained in the NPRM's preamble, the current regulations' focus on the relationship between the two employers has been useful to both the public and courts. *See* 84 FR 14051–52. Non-substantive revisions articulating the focus as whether the two employers are ''sufficiently associated,'' providing three situations where the two employers are generally sufficiently associated, and stating that certain business relationships which have little to do with the employment of specific workers are insufficient should make the regulations even more useful to both the public and courts. Accordingly, the Department adopts the analysis for determining joint employer status in the second scenario as proposed and does not make any changes to proposed § 791.2(e).

In response to requests from commenters for further revisions to the examples, the Department reiterates that its revisions to the current regulations are non-substantive and should not change the outcome in particular cases, and thus are ''in line'' with how joint employer status has been determined in the past in the second scenario. However, incorporating the *Bonnette* factors into the joint employer analysis in the second scenario would be inconsistent with the longstanding approach to focus on the relationship and association between the two potential joint employers. The *Bonnette* factors, by contrast, focus on the relationship between the potential joint employer and the employee of another employer. Finally, the Department has not changed its views of a situation where two employers arrange to employ a common watchman who watches both employers' properties concurrently. Although the employee works one set of hours for the two separate employers, the employers are joint employers because they have arranged to share the employee's services. This result is the same under the Department's 1939 Interpretative Bulletin No. 13, its current regulations, and this final rule. Of course, as explained previously, the two employers are not both required to pay the employee at least the minimum wage due under the Act because of their joint and several liability.

G. Liability of Joint Employer

The proposed rule (§ 791.2(f)) explained that a joint employer ''is jointly and severally liable with the employer and any other joint employers for compliance with all of the applicable provisions of the Act.'' 84 FR 14059. This provision merely restates the longstanding principle of joint and several liability under the Act. The Department received no comments regarding its proposed § 791.2(f), and it adopts that proposed section in the final rule.

H. Illustrative Examples

In the NPRM, the Department proposed to add nine illustrative examples to the regulatory text applying the Department's proposed analysis to determine joint employer status. The proposed examples addressed each of the two potential joint employer scenarios (*i.e.,* where an employee's work for an employer simultaneously benefits another entity, and where an employee works separately for two or more employers), and involved a variety of different industries and specific facts. The proposal cautioned that the conclusions following each of the nine proposed examples would be limited to substantially similar factual situations.

Commenters representing employers overwhelmingly supported the proposal to add illustrative examples to the regulations, asserting that examples would bring added clarity. *See, e.g.,* Association for Corporate Growth; Fed Ex; HR Policy Association; World Floor Covering Association. The American Hotel & Lodging Association and National Federation of Independent Businesses each noted that including examples in the regulatory text would be particularly helpful for small businesses that have fewer resources to spend on compliance and legal support. Several commenters, including the Retail Industry Leaders Association (RILA) and the Washington Legal Foundation, urged the Department to adopt more examples in its final rule, for even greater clarity.

Few commenters representing employees addressed the proposed examples, but two commenters, the AFL–CIO and the Coalition of State AGs, criticized the proposed examples as collectively inadequate. Both commenters asserted that several of the proposed examples fail to provide enough information to determine whether a joint employment relationship exists, while the Coalition of State AGs asserted that other proposed examples were so ''unquestionably demonstrative of a joint-employment relationship [that they would be] unhelpful to someone trying to apply the new joint-employment standard to 'close calls.' '' Several commenters, including commenters representing employers, had substantive concerns or suggested edits to the specific proposed examples, as discussed in greater detail below.

After considering commenters' general feedback to the proposed examples, the Department has decided to adopt illustrative examples in this final rule. The Department believes that codifying factual examples in the regulations can provide helpful insight into how the Department intends for its FLSA joint employer analysis to be applied, particularly for smaller businesses who have (or might be contemplating) similar labor arrangements. Specifically, and as described in greater detail below, the Department has decided to adopt four of its proposed examples without edit, to adopt five of its proposed examples with some changes, and to add two new examples.

1. Commenter Feedback to the Example in Proposed § 791.2(g)(1)

Proposed Example 1 described a cook working separate hours for two different restaurant establishments affiliated with the same nationwide franchise. These establishments are locally owned and managed by different franchisees that do not coordinate in any way with respect to the cook. Under these facts, the proposed example advised that the two restaurant establishments are not joint employers of the cook, because they are not associated in any meaningful way with respect to the cook's employment.

The Society of Independent Gasoline Marketers of America (SIGMA) commented that proposed Example 1 ''provides excellent context and clarity surrounding joint employment as it relates to franchises.'' The Fisher Phillips law firm agreed with the analysis provided in proposed Example 1, but requested the Department to either modify the example or add a new example to illustrate that use of a third-

party ''virtual marketplace platform'' (VMP) to schedule the same worker would not extend joint liability to the two restaurants, or to the third party administering the VMP. Finally, HR Policy Association suggested adding language to the proposed analysis subsection clarifying that this example implicates the second joint employer scenario described in proposed § 791.2(e) ''because the cook is employed by two different employers.'' [88] The Department did not receive any other comments on this example.

The Department has decided to adopt Example 1 as originally proposed in § 791.2(g)(1). The Department agrees with Fisher Phillips that uncoordinated use of a common third party service to schedule workers does not establish that otherwise separate employers are associating with the respect to any particular worker, but believes that evaluating the joint employer status of the third party administering the scheduling service requires the consideration of additional facts that would complicate the example and detract from its focus on the franchise business model. Similarly, the Department agrees with HR Policy Association that Example 1 implicates the joint employer scenario described in § 791.2(e) because it involves an employee working separate hours for separate employers in the same workweek, but language identifying which of the two potential joint employer scenarios described in § 791.2(a)–(e) each example implicates is unnecessary and potentially confusing for lay readers. The Department therefore rejects HR Policy Association's similar suggested edits to the other proposed examples.

2. Commenter Feedback to the Example in Proposed § 791.2(g)(2)

Proposed Example 2 described a cook working separate hours for two different restaurant establishments owned by the same person. Each week, the restaurants coordinate and set the cook's schedule of hours at each location on a weekly basis, and the cook works interchangeably at both restaurants. The restaurants decided together to pay the cook the same hourly rate. Here, the proposed example advised that the restaurant establishments are joint employers of the cook because they share common ownership, coordinate the cook's schedule of hours at the restaurants, and jointly decide the cook's terms and conditions of employment, such as the pay rate.

The Nisei Farmers League expressed concern that the analysis for proposed Example 2 identified the fact that the restaurants jointly determined the cook's hourly pay rate as evidence indicating the existence of a joint employer relationship. Noting how common such a practice is in the agricultural industry, Nisei Farmers League asserted that a potential joint employer's role in setting a worker's pay rate should not be relevant to the analysis, because otherwise ''the business model between a grower and [a farm labor contractor] automatically weighs towards finding joint employment before the facts of the situation are reviewed.'' The Department did not receive any other comments on proposed Example 2.

The Department has decided to adopt Example 2 as originally proposed in § 791.2(g)(2). The Department disagrees with the Nisei Farmers League that ''jointly determining worker's pay rate should be given no weight'' in the analysis, especially in the second scenario where (as described in Example 2) the same individual works separate hours for ostensibly separate employers in the same workweek. The Department notes that, for FLSA purposes,[89] growers utilizing farm labor contractors in the agricultural industry would be evaluated as potential joint employers under the first scenario described in § 791.2(a). Here, although determining the employee's rate and method of payment is one of the four main factors that determine whether an entity is a joint employer, no single factor is dispositive in determining joint employer status under the Act.

3. Commenter Feedback to the Example in Proposed § 791.2(g)(3)

Proposed Example 3 described an arrangement between an office park company and a janitorial services company hired to clean the office park building after normal work hours. Their contract stipulates that the office park agrees to pay the janitorial company a fixed fee for these services and reserves the right to supervise the janitorial employees in their performance of those cleaning services. However, office park personnel do not set the janitorial employees' pay rates or individual schedules and do not in fact supervise the workers' performance of their work in any way. Under these facts, the proposed example advised that the office park is not a joint employer of the janitorial employees because it does not hire or fire the employees, determine their rate or method of payment, or exercise control over their conditions of employment. The proposed example elaborated that the office park's reserved contractual right to control the employee's conditions of employment does not demonstrate that it is a joint employer.

The American Bakers Association said it appreciated proposed Example 3, which it viewed as representative of janitorial service arrangements common in the wholesale baking industry that should not constitute joint employment. SIGMA was generally supportive of Example 3, but requested the Department to remove the phrase ''in any way,'' which they asserted ''is very strong and appears to limit instances—such as where a company sets a sexual harassment policy—where a business may have a modicum of oversight.'' To help illustrate other elements of the proposed rule, RILA suggested inserting additional facts to Example 3 that would not affect the outcome of the analysis, such as contractual terms requiring the janitorial services company to complete the services within specified hours and to comply with all applicable health and safety laws, rules, and regulations. Consistent with its criticism of the Department's proposed treatment of reserved control, NELA criticized proposed Example 3's statement that ''the reserved right to control the employee's conditions of employment does not demonstrate that it is a joint employer'' as an incorrect application of the law. The Coalition of State AGs specifically identified proposed Example 3 as one of several examples it said ''fail to provide enough information for an accurate determination of joint employment under current court precedent.''

The Department has decided to adopt proposed Example 3 with one modification at § 791.2(g)(3). Consistent with the Department's change to its proposed treatment of reserved control, it has changed the sentence advising that the office park's reserved right to control the janitorial workers ''does not demonstrate that it is a joint employer'' to read, in relevant part, that the such reserved control ''*is not enough to establish* that it is a joint employer.'' In

[88] HR Policy Association suggested similar clarifying edits to all of the proposed examples, to specify whether each example implicates the first and/or second joint employer scenario described in the Department's proposed analysis.

[89] Most agricultural employers, agricultural associations, and farm labor contractors are also subject to MSPA. As noted earlier, the Department will continue to use the standards in its MSPA joint employer regulation to determine joint employer status under MSPA. *See supra* note 55. Among other factors, the MSPA joint employer regulation considers an agricultural employer's ''power, either alone or in addition to another employer, directly or indirectly, to . . . determine the pay rates or the methods of wage payment for the worker(s).'' 29 CFR 500.20(h)(5)(iv)(B).

other words, while an entity's reserved right to control workers is relevant to the inquiry and indicative of joint employer status to some degree, it is far from dispositive where, as in this example, an entity does not otherwise exercise significant control over the terms and conditions of an employee's work. The Department declines RILA's suggested edits to Example 3, because inserting additional facts—including facts identified as irrelevant to the FLSA joint employer inquiry in § 791.2(d)—risks complicating the analysis and detracting from the example's focus on the relatively minimal importance of the office park's reserved right to control the workers. For similar reasons, the Department declines SIGMA's request to delete the phrase ''in any way'' from the example's description of the facts.

4. Commenter Feedback to the Example in Proposed § 791.2(g)(4)

Proposed Example 4 described an arrangement between a country club and a landscaping company hired to maintain its golf course. The country club lacks authority to fire, hire, or supervise the landscaping employees. But in practice, it ''sporadically assign[s]'' tasks, provides ''periodic instructions,'' and ''keep[s] intermittent records'' of landscape employees' work. Furthermore, the landscaping company terminates a worker ''at the country club's direction'' because that worker failed to follow the country club's instructions. The application section of the example concluded that ''the country club is a joint employer of the landscaping employees'' based on the country club's direct supervision of the landscaper's employees and the indirect firing of one employee.

Commenters found this example ''demonstrates the difficulty in applying the concept of 'indirect, actual control.'' Coalition for Democratic Workplace; National Retail Federation; *see also* RLC and the Association. The National Retail Federation noted that ''the example does not provide any guidance on what it means to 'direct' a termination for which the club has no contractual authority.'' The Coalition for Democratic Workspace expressed concern that the example's ''vague limiting terms''—*i.e.,* ''sporadic,'' ''periodic,'' and ''intermittent''—leave it unclear whether the club's supervision of the landscaping employee triggers joint employment status. And the Retail Industry Leaders Association complained that the example ''leaves unresolved whether the worker was causing damage to club property or violating safety rules (or by contrast, merely completing a task in a different order than the club official may have preferred).'' *See also* RLC and the Association (requesting an example specific to the restaurant industry involving a cleaning company employee who ''does not do a good job, does not show up, is rude to the restaurant's customers, harasses the restaurant's employees or demonstrates other deficiencies'').

The Department has reconsidered the example set forth in proposed § 791.2(g)(4) in light of its revised description of ''indirect control'' in § 791.2(a), and has decided to revise the example for several reasons. As an initial matter, the Department has decided to replace the county club and landscaping company described in the proposed example with a restaurant and cleaning company, respectively. This change responds to the RLC and Association's request for an example relevant to the restaurant industry, but does not otherwise affect the analysis. For the sake of simplicity, our discussion of other changes to the proposed example will use the terms ''restaurant'' and ''cleaning company'' as if those were the entities described in the proposed example.

Other changes to proposed Example 4 are more substantive. For example, the proposed description of the facts states that the cleaning company terminated an employee ''at the [restaurant's] direction.'' But the proposed facts also specifically state that the restaurant lacks authority to direct the cleaning company's firing or hiring decisions. The Department is therefore revising § 791.2(g)(4)(i) to state the termination was ''[a]t the restaurant's *request*'' (emphasis added).

The Department is further revising the example to clarify two factual matters that commenters found vague or ambiguous. First, the Department is removing the terms ''sporadic,'' ''periodic,'' and ''intermittent'' because these vague terms obscure ''the degree of supervision'' on which joint employer status depends.[90] The Department is instead specifying that the restaurant provides general instructions to a team leader from the cleaning company each workday and monitors the performance of the work, while a team leader from the cleaning company provides detailed supervision. The Department believes these revisions remove ambiguity and also make the example reflect real world business practices more accurately. Second, the Department is clarifying that the terminated employee failed to follow an instruction that related to guest safety.

Proposed § 791.2(g)(4)(ii) concluded that the restaurant ''indirectly fired one of the [cleaning company] employees.'' However, it is the Department's view that a single request to fire an employee in this example was not significant enough to exercise indirect control over hiring or firing. Importantly, the cleaning company was not necessarily obligated to comply with the requested firing. Rather, it could have sent that employee to a different client or even continued to send him to the restaurant. The Department is therefore revising § 791.2(g)(4)(ii) to state that the termination of the cleaning company employee under these facts is not an exercise of indirect control by the restaurant.

Proposed § 791.2(g)(4)(ii) further states that the restaurant ''directly supervises the [cleaning company] employees' work and determines their schedule.'' Joint employer status depends, in part, on whether supervision ''goes beyond general instructions . . . and begins to assign specific tasks, to assign specific workers, or to take an overly active role in the oversight of the work.'' [91] This question cannot be answered under proposed § 791.2(g)(4)(i) because the restaurant official provides assignments and instructions on a ''sporadic'' and ''periodic'' basis. And it is unclear whether those assignments and instructions are directed toward specific employees, or relayed to the cleaning company employees through a supervisor working for the cleaning company. In contrast, revised § 791.2(g)(4)(i) provides concrete facts regarding the restaurant's supervisory actions and distinguishes such actions from the detailed supervision that is provided by the cleaning company's team leader. Under those facts, the restaurant's actions do not ''go beyond general instructions'' and therefore, although relevant, are not enough for joint employer status. The Department is therefore revising § 791.2(g)(4)(ii) to conclude that, based on the facts presented in revised § 791.2(g)(4)(i), the restaurant's supervision of the cleaning company's employees does not give rise

[90] *Layton,* 686 F.3d at 1178.

[91] *Layton,* 686 F.3d at 1178 (''DHL had certain objectives—having its packages delivered on time, serving its customers—that . . . [plaintiffs] were tasked with accomplishing. DHL did not involve itself with the specifics of how those goals would be reached—it did not apportion tasks to individuals, specify how many individuals should be assigned to each delivery route, or structure the chain of command among [plaintiffs]. Overall, this factor weighs against a finding of joint employment because DHL did not exert control as an employer would have.'').

to joint employer status. The Department is further revising § 791.2(g)(4)(ii) to explain that keeping a record of the cleaning company's completed assignments is not relevant, because such records are not an ''employment record'' within the meaning of § 791.2(a)(1)(iv). However, to provide greater clarity, the Department has decided to add a contrasting example, codified in § 791.2(g)(5), illustrating where joint employer status would exist, in part, due to an entity's indirect control over the hiring and firing of another employer's employees.

5. Commenter Feedback to the Example in Proposed § 791.2(g)(5)

Proposed Example 5 described a packaging company requesting workers on a daily basis from a staffing agency. The packaging company determines each worker's hourly rate of pay, supervises their work, and uses sophisticated analysis of expected customer demand to continuously adjust the number of workers it requests and the specific hours for each worker, sending workers home depending on workload. Under these facts, the proposed example advised that the packaging company is a joint employer of the staffing agency's employees because it exercises sufficient control over their terms and conditions of employment by setting their rate of pay, supervising their work, and controlling their work schedules.

The International Warehouse Logistics Association (IWLA) expressed concern that proposed Example 5 could ''create confusion among entities that engage in similar practices to the hypothetical packaging company, as they may assume that participating in any of the practices mentioned in the example would trigger a joint employer relationship.'' Accordingly, IWLA requested the Department to either remove proposed Example 5 or add language at the end of the analysis subsection clarifying that ''an entity found only to be engaged in some of the practices listed in the example may not automatically be considered to be a joint employer.'' RILA did not object to proposed Example 5, but asserted that employers would benefit from the addition of a converse example to the final rule illustrating the circumstances where a staffing agency client would *not* qualify as an FLSA joint employer.

The American Staffing Association (ASA) criticized proposed Example 5 as an unrealistic depiction of the staffing industry, asserting that staffing agencies (and not their business clients) typically set a temporary worker's rate of pay. ASA expressed concern that ''using an atypical example to illustrate joint employment in such arrangements may cause some staffing firms and clients to infer that a client cannot be a joint employer unless it sets the pay rates.'' Accordingly, ASA urged the Department to delete Example 5's references to pay rates entirely, believing that the example should illustrate that ''the two most common, and legally significant, forms of control exercised by staffing firm clients over the staffing firm's employees—supervision over their work and controlling their work schedules—are sufficient to establish [a staffing agency] client as a joint employer.'' Relatedly, the Coalition of State AGs identified Example 5 as one of several examples featuring so many facts indicating joint employment that it would be of little practical use in most instances.

The Department appreciates ASA's criticism that proposed Example 5 is not a realistic depiction of the staffing industry, and the related argument from the Coalition of State AGs that the proposed example is unhelpfully lopsided. Accordingly, the Department has decided to revise the example to illustrate that a staffing agency client exercising significant control over the scheduling and work performed by a temporary worker can qualify as an FLSA joint employer even though the staffing agency—rather than the client—determines the worker's specific rate of pay. These edits are consistent with the accepted understanding that not all of the factors in the four-factor balancing test need to be satisfied to establish that an entity qualifies as a joint employer. *See, e.g., Barfield* v. *N.Y.C. Health & Hosps. Corp.,* 537 F.3d 132, 144–45 (2d Cir. 2008) (''The traditional four-factor test . . . strongly indicates that Bellevue should be deemed Barfield's joint employer . . . . [even though] the third [*Bonnette*] factor, relating determination of the rate and method of a worker's payment, is inconclusive.''); *Herman* v. *RSR Sec. Servs. Ltd.,* 172 F.3d 132, 140 (2d Cir. 1999) (finding joint employer status under the *Bonnette* test despite ''[l]ittle evidence suggest[ing]'' that the defendant was involved in determining the worker's rate of payment). However, the Department agrees with RILA that the public would benefit from an example illustrating a scenario where a staffing agency client would *not* qualify as a joint employer, notwithstanding some limited supervision over the work performed by temporary workers to ensure basic quality, quantity and safety standards.

Accordingly, the Department adopted an edited version of proposed Example 5 in § 791.2(g)(6) and added a new example arriving at a different outcome in § 791.2(g)(7). Similar to the juxtaposition of proposed Examples 1 and 2, the Department believes that providing a contrasting pair of examples involving staffing agency clients would be particularly helpful for showing how the Department's joint employer analysis applies to temporary staffing agencies.

6. Commenter Feedback to the Example in Proposed § 791.2(g)(6)

Proposed Example 6 described an Association, whose membership is subject to certain criteria such as geography or type of business, providing optional group health coverage and an optional pension plan to its members to offer to their employees. The example further described two employer members of the Association, B and C, who decide to offer the Association's optional group health coverage and pension plan to their respective employees who choose to opt in to the health and pension plans. The proposed example offered two conclusions. First, the example advised that the Association is not a joint employer of B and C's employees because participation in the Association's optional plans does not involve any control by the Association, direct or indirect, over B's or C's employees. Second, the example advised that B and C are not joint employers of each other's employees because, while they independently offer the same plans to their respective employees, there is no indication that B and C are coordinating, directly or indirectly, to control the other's employees.

SIGMA complimented proposed Example 6 for illustrating the proposition that merely offering certain benefits to employees, such as health care or retirement plans, does not constitute joint employment. WFCA expressed concern that readers might interpret the proposed example and its analysis as confined to benefit plans offered by associations, and requested the Department to clarify that the analysis is equally applicable to benefit plans offered by franchisors or general contractors.

The Department has decided to adopt Example 6 as originally proposed in § 791.2(g)(8). The Department agrees with WFCA that the reasoning of Example 6 could also apply to a franchisor or general contractor that offers optional benefit plans to its franchisees or subcontractors, respectively. Because the examples provided in § 791.2(g) are not exhaustive illustrations of the permissible business practices

identified in § 791.2(d), the Department does not believe that any edits to this proposed example are necessary.

7. Commenter Feedback to the Example in Proposed § 791.2(g)(7)

Proposed Example 7 described a large national company, Entity A, contracting with multiple other businesses in its supply chain. As a precondition of doing business with Entity A, all contracting businesses must agree to comply with a code of conduct, which includes a minimum hourly wage higher than the federal minimum wage, as well as a promise to comply with all applicable federal, state, and local laws. Here, the example advised that such contractual provisions are not enough to establish that Entity A is a joint employer of its contractors' employees.

SIGMA commented that it fully supported the analysis provided in proposed Example 7, asserting that such contractual standards are ''*routine* in the franchise space and should be acceptable under the joint employer standard'' (emphasis in original). HR Policy Association suggested adding to the facts that Entity A requires its contracting businesses to provide ''certain levels of paid leave,'' in addition to a wage floor above the federal minimum wage, to illustrate that a paid leave requirement would be equally irrelevant to the analysis. The Department received no other comments on Example 7.

The Department agrees with HR Policy Association that a contractual provision insisting that suppliers provide their workers with a minimum amount of paid leave is no more indicative of joint employer status than a similar provision setting a wage floor above the federal minimum wage. However, in light of our agreement with other commenters that wage floors may be relevant to the ''rate or method of payment'' factor described in § 791.2(a)(1)(iii), we decline to add a similar contractual provision to the example that would further complicate the analysis. To the contrary, we have amended the example's description of the facts to make clear that Entity A does not implicate any of the other three factors enumerated in § 791.2(a)(1)—*i.e.,* hiring and firing, supervision, and the maintenance of employment records—and added language explaining the role of the wage floor in the analysis. This modified version of proposed Example 7 is codified at § 791.2(g)(9).

8. Commenter Feedback to the Example in Proposed § 791.2(g)(8)

Proposed Example 8 described Franchisor A as a global organization representing a hospitality brand with several thousand hotels under franchise agreements, including Franchisee B. Franchisor A provides Franchisee B with a sample employment application, a sample employee handbook, and other forms and documents for use in operating the franchise. The licensing agreement is an industry-standard document explaining that B is solely responsible for all day-to-day operations, including hiring and firing of employees, setting the rate and method of pay, maintaining records, and supervising and controlling conditions of employment. Under these facts, the proposed example advised that Franchisor A is not a joint employer of Franchisee B's employees, explaining that providing such samples, forms, and documents does not amount to direct or indirect control over B's employees that would establish joint liability.

The American Bakers Association and SIGMA strongly supported proposed Example 8, agreeing with its analysis and predicting that it would have a clarifying effect for franchisors. RLC & the Association supported the outcome of the proposed example but urged the Department to expand the list of franchisor resources discussed in the example to ''reflect the true scope and nature of the franchising relationship in the 21st century,'' identifying training services, labor scheduling tools, and ''certain point of sale, inventory management, and other software, products or equipment'' as potential items for inclusion. WFCA similarly suggested expanding the list of sample items discussed in the example to include ''suggested or sample operational plans, business plans, marketing materials, and similar items . . . [including] hiring guidelines and interview questions, provided they do not dictate who is hired or their wages and other conditions of employment.'' Finally, one commenter representing employees, NELA, asked the Department to specify that the sample forms and documents discussed in the proposed example are optional. NELA asserted that forms and documents that a franchisor requires its franchisees to use ''can be evidence of control over the working conditions at issue and should be given weight in the joint employment analysis,'' but stated that they would agree with the outcome of the proposed example if the forms and documents were stipulated to be optional.

The Department appreciates RLC & the Association and WFCA's request to expand on the list of franchisor resources discussed in proposed Example 8. In response to these comments, as well as the IFA's request for additional content in the final rule addressing permissible franchisor practices, the Department has decided to elaborate on the facts provided in the example. At the same time, the Department agrees with NELA's suggestion to emphasize that the franchisor resources provided in the example that relate specifically to staffing and employment, such as the employee handbook, are optional. The Department notes that several commenters representing employers seemed to endorse a distinction between employment-related resources that are provided as an optional matter to a business partner, and those that are imposed. *See e.g.,* U.S. Chamber of Commerce (suggesting regulatory text advising that ''[a] potential joint employer's practice of offering *optional* business resources to another employer that do not result in actual control by the potential joint employer over the other employer's employees, does not make joint employer status more or less likely under the Act.'') (emphasis added). Accordingly, the Department has adopted an edited version of proposed Example 8 in § 791.2(g)(10).

9. Commenter Feedback to the Example in Proposed § 791.2(g)(9)

Proposed Example 9 described a large retail company that owns and operates a large store. The retail company contracts with a cell phone repair company, allowing the repair company to run its business operations inside the building in an open space near one of the building entrances. As part of the arrangement, the retail company requires the repair company to establish a policy of wearing specific shirts and to provide the shirts to its employees that look substantially similar to the shirts worn by employees of the retail company. Additionally, the contract requires the repair company to institute a code of conduct for its employees stating that the employees must act professionally in their interactions with all customers on the premises. Under these facts, the proposed example advised that the retail company is not a joint employer of the cell phone repair company's employees. The example elaborated that that the leasing agreement and code of conduct are irrelevant to the joint employer analysis, and that the retail company's uniform policy does not, on its own, demonstrate substantial control over the repair company's employees' terms and conditions of employment.

SIGMA complimented the outcome and analysis of proposed Example 9, but requested an additional co-location example specific to the fuel retailing

industry (*e.g.,* a fast food establishment operating an independent kiosk within a gas station convenience store). WFCA described the proposed example as ''very insightful,'' but requested an additional example to illustrate that ''requiring or supplying specific shirts and instituting a code of conduct is not limited to situations where the subcontractor is on the retailer's property.'' HR Policy Association suggested adding language to the analysis clarifying that the retail company's uniform requirement ''does not make joint employer status more likely.'' NELA stated that the proposed example's ''conclusion that joint employment is not present appears correct,'' but requested the Department to amend the statement in the analysis advising that ''allowing the repair company to operate on its premises does not make joint employer status [for the retail company] more or less likely under the Act.'' Specifically, NELA requested the Department to characterize the store-within-a-store arrangement as a relevant but non-determinative fact for determining the retail company's status as a joint employer.

The Department has decided to adopt Example 9 as originally proposed in § 791.2(g)(11). The Department did not intend to imply that a uniform requirement imposed on another employer's employees is irrelevant to the joint employer analysis; the example merely illustrates that such a requirement is insufficient to establish joint employer status where, as the analysis underscores, ''there is no indication that [an entity] hires or fires the [another employer's] employees, controls any *other* terms and conditions of their employment, determines their rate and method of payment, or maintains their employment records'' (emphasis added). The Department agrees with WFCA that the relevance of a uniform requirement does not depend upon where the workers perform their work. However, the Department disagrees with NELA that an entity's decision to allow an employer to operate on their premises has any relevance in determining whether the entity is an FLSA joint employer. This kind of arrangement does not ''relat[e] to an employee,'' 29 U.S.C. 203(d), and concluding otherwise, even by characterizing such arrangements as minimally indicative of joint employer status, could deter entities from entering into such arrangements going forward. Consistent with the Department's decision to implement its proposed identification in § 791.2(d) of ''store-within-a-store'' arrangements as not making joint employer status more or less likely under the Act, the Department declines to edit the proposed treatment of the kind of arrangement at issue in this example.

10. Other Commenter Requests for New Examples

Some commenters representing employers requested or suggested additional illustrative examples, in addition to those discussed earlier. For example, the National Association of Convenience Stores (NACS) requested an example ''explaining the effect (or lack thereof) of a brand and supply contract relationship on the joint employer analysis,'' such as an agreement between a gasoline supplier and a convenience store. Associated General Contractors of America (AGC) and the NAHB separately requested one or more examples addressing potential joint employment situations in the construction industry. Like the Nisei Farmers League, the National Council of Agricultural Employers (NCAE) asked the Department to consider adding examples involving ''agriculture, generally, and farm-labor contracting, specifically.'' Finally, HR Policy Association, RILA, and the Washington Legal Foundation drafted several suggested examples involving a variety of facts and industries for the Department's consideration.

The Department declines these commenter requests and suggestions for additional illustrative examples. Including the new staffing agency example that will appear in § 791.2(g)(7), the Department is implementing eleven illustrative examples in this final rule. The Department believes that these eleven examples are diverse enough to cover a wide variety of similar factual circumstances, regardless of the particular industry they describe. Finally, the Department notes that the final rule's elaboration in § 791.2(d) of business models, contractual provisions, and business practices that do not make joint employer status more or less likely under the Act addresses the concerns of some of the commenters who requested additional examples. For example, in response to the NACS' request for an example involving a brand and supply agreement, the Department notes that § 791.2(d)(2) specifically identifies ''brand and supply'' agreements as business models which do not make joint employer status more or less likely.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This final rule does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act.

VI. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of a regulation and to adopt a regulation only upon a reasoned determination that the regulation's net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) justify its costs. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is a ''significant regulatory action,'' which includes an action that has an annual effect of $100 million or more on the economy. Significant regulatory actions are subject to review by OMB. As described below, this final rule is economically significant. Therefore, the Department has prepared a Regulatory Impact Analysis (RIA) in connection with this final rule as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule.

By clarifying the standard for determining joint employer status, this final rule would reduce the burden on the public. This final rule has been determined to be an Executive Order 13771 deregulatory action.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of lnformation and Regulatory Affairs designated this rule as a 'major rule', as defined by 5 U.S.C. 804(2).

A. Introduction

1. Background

The FLSA requires a covered employer to pay its nonexempt employees at least the federal minimum wage for every hour worked and overtime premium pay of at least 1.5-times their regular rate of pay for all hours worked in excess of 40 in a workweek. The FLSA defines an ''employer'' to ''include[ ] any person

acting directly or indirectly in the interest of an employer in relation to an employee.'' These persons are ''joint'' employers who are jointly and severally liable with the employer for every hour worked by the employee in a workweek. 29 CFR part 791 contains the Department's official interpretation of joint employer status under the FLSA. In this rule, the Department revises part 791 to adopt a four-factor balancing test to determine joint employer status in one of the joint employer scenarios under the Act—where an employer suffers, permits, or otherwise employs an employee to work, and another person simultaneously benefits from that work. This final rule explains what additional factors should and should not be considered, and provides guidance on how to apply this multi-factor test. The Department makes no substantive changes to part 791's guidance in the other joint employer scenario—where multiple employers suffer, permit, or otherwise employ an employee to work separate sets of hours in the same workweek. The Department believes that these revisions make it easier to determine whether a person is or is not a joint employer under the Act, thereby promoting compliance with the FLSA.

2. Need for Rulemaking

For the reasons explained above, the Department has determined that its interpretation of joint employer status requires revision as it applies to the first joint employer scenario identified above (one set of hours worked in a workweek). The Department is concerned that the current regulation does not adequately address this scenario, and believes that its revisions provide needed clarity in this scenario. The Department also believes this rule:

- Helps bring clarity to the current judicial landscape, where different courts are applying different joint employer tests that have resulted in inconsistent treatment of similar worker situations, uncertainty for organizations, and increased compliance and litigation costs;
- Reduces the chill on organizations who may be hesitant to enter into certain relationships or engage in certain kinds of business practices for fear of being held liable for counterparty employees over which they have insignificant control;
- Better grounds the Department's interpretation of joint employer status in the text of the FLSA; and
- Is responsive to the current public and Congressional interest in the joint employer issue.

The Department believes that the current regulation provides clear and useful guidance to determine joint employer status in the second scenario, but that non-substantive revisions to better reflect the Department's longstanding practice would be desirable.

B. Economic Impacts

The Department estimated the number of affected firms and quantified the costs associated with this final rule. The Department expects that all businesses and state and local government entities would need to review the text of this rule, and therefore would incur regulatory familiarization costs. However, on a per-entity basis, these costs would be small (see section V.2 for detailed analysis of regulatory familiarization costs). Because this rule does not alter the standard for determining joint employer status in the second joint employer scenario where the employee works separate sets of hours for multiple employers in the same workweek, the Department believes that there would be no change in the aggregation of workers' hours to determine overtime hours worked.[92] Therefore, there would be no impact on workers in the form of lost overtime, and no transfers between employers and employees. Although this rule would alter the standard for determining joint employer status where the employee works one set of hours in a workweek that simultaneously benefits another person, the Department believes that there would still be no impact on workers' wages due under the FLSA. This standard would not change the amount of wages the employee is due under the FLSA, but could reduce, in some cases, the number of persons who are liable for payment of those wages. To the extent this rule provides a clearer standard for determining joint employer status where the employee works one set of hours for his or her employer that simultaneously benefits another person, this rule may make it easier to determine who is liable for earned wages.

[92] In this scenario, the employee's separate sets of hours are aggregated so that both employers are jointly and severally liable for the total hours the employee works in the workweek. As such, a finding of joint liability in this situation can result in some hours qualifying for an overtime premium. For example, if the employee works for employer A for 40 hours in the workweek, and for employer B for 10 hours in the same workweek, and those employers are found to be joint employers, A and B are jointly and severally liable to the employee for 50 hours worked—which includes 10 overtime hours.

1. Costs

Updating the Department's interpretation of joint employer status will impose direct costs on private businesses and state and local government entities by requiring them to review the new regulation. To estimate these regulatory familiarization costs, the Department determined: (1) The number of potentially affected entities, (2) the average hourly wage rate of the employees reviewing the regulation, and (3) the amount of time required to review the regulation.

It is uncertain whether private entities will incur regulatory familiarization costs at the firm or the establishment level. For example, in smaller businesses there might be just one specialist reviewing the regulation. Larger businesses might review the rule at corporate headquarters and determine policy for all establishments owned by the business, while more decentralized businesses might assign a separate specialist to the task in each of their establishments. To avoid underestimating the costs of this rule, the Department uses both the number of establishments and the number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the regulation, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this final rule was drafted are from the 2016 Statistics of U.S. Businesses (SUSB), which reports 6.1 million private firms and 7.8 million private establishments with paid employees.[93] Additionally, the Department estimates 90,126 state and local governments (2017 Census of Governments) might incur costs under this rule.[94]

The Department believes that even entities that do not currently have workers with one or more joint employers will incur regulatory familiarization costs, because they will need to confirm whether this final rule includes any provisions that may affect them or their employees.

The Department judges one hour per entity, on average, to be an appropriate review time for the rule. The relevant statutory definitions have been in the FLSA since its enactment in 1938, the

[93] Statistics of U.S. Businesses 2016, *https://www.census.gov/programs-surveys/susb.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[94] 2017 Census of Governments—Organization. *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

Department has recognized the concept of joint employer status since at least 1939, and the Department already issued a rule interpreting joint employer status in 1958. Therefore, the Department expects that the standards applied by this rule should be at least partially familiar to the specialists tasked with reviewing it. Additionally, the Department believes many entities are not joint employers and thus would spend significantly less than one hour reviewing the rule. Therefore, the one-hour review time represents an average of less than one hour per entity for the majority of entities that are not joint employers, and more than one hour for review by entities that might be joint employers. The Department did not receive any comments providing a better estimate of the time to review this rule.

The Department's analysis assumes that the rule would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The mean hourly wage for these workers is $32.65 per hour.[95] In addition, the Department also assumes that benefits are paid at a rate of 46 percent [96] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in an hourly rate of $53.22.

TABLE 1—TOTAL REGULATORY FAMILIARIZATION COSTS, CALCULATION BY NUMBER OF FIRMS AND ESTABLISHMENTS

[$1000s]

NAICS sector	By firm		By establishment	
	Firms	Cost [a]	Establishments	Cost [a]
Agriculture, Forestry, Fishing and Hunting	21,830	$1,162	22,594	$1,202
Mining, Quarrying, and Oil/Gas Extraction	20,309	1,081	27,234	1,449
Utilities	5,893	314	18,159	966
Construction	683,352	36,368	696,733	37,080
Manufacturing	249,962	13,303	291,543	15,516
Wholesale Trade	303,155	16,134	412,526	21,954
Retail Trade	650,997	34,646	1,069,096	56,897
Transportation and Warehousing	181,459	9,657	230,994	12,293
Information	75,766	4,032	146,407	7,792
Finance and Insurance	237,973	12,665	476,985	25,385
Real Estate and Rental and Leasing	300,058	15,969	390,500	20,782
Professional, Scientific, and Technical Serv	805,745	42,881	903,534	48,086
Management of Companies and Enterprises	27,184	1,447	55,384	2,948
Administrative and Support Services	340,893	18,142	409,518	21,794
Educational Services	91,774	4,884	103,364	5,501
Health Care and Social Assistance	661,643	35,212	890,519	47,393
Arts, Entertainment, and Recreation	126,247	6,719	137,210	7,302
Accommodation and Food Services	527,632	28,080	703,528	37,441
Other Services (except Public Admin.)	690,329	36,739	754,229	40,140
State and Local Governments	90,126	4,796	90,126	4,796
All Industries	6,092,327	324,231	7,830,183	416,718
Average annualized costs, 7 percent discount rate				
Over 10 years		43,143		55,450
In perpetuity		21,211		27,262
Average annualized costs, 3 percent discount rate				
Over 10 years		36,903		47,429
In perpetuity		9,444		12,137

[a] Each entity is expected to allocate one hour of Compensation, Benefits, and Job Analysis Specialists' (SOC 13–1141) time for regulatory familiarization. The mean hourly rate for this occupation is $32.65 based on BLS's May 2018 Occupational Employment Statistics, and the wage load factor is 1.63 (0.46 for benefits and 0.17 for overhead). Therefore, the per-entity cost is $53.22.

The Department estimates that the lower bound of regulatory familiarization cost range would be $324.2 million, and the upper bound, $416.7 million. Additionally, the Department estimates that the Retail Trade industry would have the highest upper bound ($56.9 million), while the Professional, Scientific and Technical Services industry would have the highest lower bound ($42.9 million). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of this rule over 10 years and in perpetuity. Over 10 years, this rule would have an average annual cost of $43.1 million to $55.4 million, calculated at a 7 percent discount rate ($36.9 million to $47.4 million calculated at a 3 percent discount rate). In perpetuity, this rule would have an average annual cost of $21.2 million to $27.3 million, calculated at a 7 percent discount rate ($9.4 million to $12.1 million calculated at a 3 percent discount rate).

2. Potential Transfers

There are two joint employer scenarios under the FLSA: (1) Employees work one set of hours that simultaneously benefit the employer and another person, and (2) employees work separate sets of hours for multiple employers.

[95] Occupational Employment and Wages, May 2018, *https://www.bls.gov/oes/2018/may/oes131141.htm.*

[96] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

Employees who work one set of hours for an employer that simultaneously benefit another person are not likely to see a change in the wages owed them under the FLSA as a result of this rule. In this scenario, the employer is liable to the employee for all wages due under the Act for the hours worked. If a joint employer exists, then that person is jointly and severally liable with the employer for all wages due. To the extent that this standard for determining joint employer status reduces the number of persons who are joint employers in this scenario, neither the wages due the employee nor the employer's liability for the entire wages due would change. The employee would no longer have a legal right to collect the wages due under the Act from the person who would have been a joint employer under a different standard, but would still be able to collect the entire wages due from the employer.

When discussing potential transfers in the NPRM, the Department stated that the proposed rule would not have any impact on employees' wages, because it would not change the amount of wages due to an employee under the Act. For purposes of the analysis, the Department assumed that employers always fulfill their legal obligations under the Act and pay their employees in full.

Employee representatives criticized that assumption, contending that the NPRM's economic analysis was flawed because it failed to capture the costs to workers.[97] The commenters asserted that the assumption that all employers always comply with their legal obligations under the Act is demonstrably false, because if it were true, there would be no successful FLSA investigations or cases.[98] They also asserted that the rule would limit the ability of workers to collect wages due to them under the FLSA because when there is only one employer liable, it is more likely that the sole employer will lack sufficient assets to pay.[99] The Department agrees that because this rule provides new criteria for determining joint employer status under the FLSA in the first scenario, it may reduce the number of businesses currently found to be joint employers from which employees may be able to collect back wages due to them under the Act. This, in turn, may reduce the amount of back wages that employees are able to collect when their employer does not comply with the Act and, for example, their employer is or becomes insolvent.

EPI submitted a quantitative analysis of transfers, estimating that transfers will result from both an increase in workplace fissuring and increased losses due to wage theft by employers.[100] The Department appreciates EPI's quantitative analysis, but does not believe there are data to accurately quantify the impact of this rule. The Department lacks data on the current number of businesses that are in a joint employment relationship, or to estimate the financial capabilities (or lack thereof) of these businesses and therefore is unable to estimate the magnitude of a decrease in the number of employers liable as joint employers.

Employees who work separate sets of hours for multiple employers are not affected because the Department is not making any substantive revisions to the standard for determining joint employer status in this scenario. Therefore, joint liability (or lack thereof) in this scenario should not be altered by the promulgation of this rule.

3. Other Potential Impacts

To the extent revising the Department's regulation provides more clarity, the revision could promote innovation and certainty in business relationships, which also benefits employees. The modern economy involves a web of complex interactions filled with a variety of unique business organizations and contractual relationships. When an employer contemplates a business relationship with another person, the other person may not be able to assess what degree of association with the employer will result in joint and several liability for the employer's employees. Indeed, the other person may be concerned with such liability despite having insignificant control over the employer's employee. This uncertainty could impact the other person's willingness to engage in any number of business practices vis-à-vis the employer—such as providing a sample employee handbook, or other forms, to the employer as part of a franchise arrangement; allowing the employer to operate a facility on its premises; using or establishing an association health plan or association retirement plan used by the employer; or jointly participating with an employer in an apprenticeship program—even though these business practices could benefit the employer's employees. Similarly, uncertainty regarding joint liability could also impact that person's willingness to bargain for certain contractual provisions with the employer, such as requiring workplace safety practices, sexual harassment policies, morality clauses, or other measures intended to encourage compliance with the law or to promote other desired business practices. The Department's revisions may provide additional certainty as businesses consider whether to adopt such business practices.

Commenters agreed that the additional clarity would promote business relationships. For example, the International Franchise Association (IFA) explained how the current outdated regulations have caused a reduction in franchising opportunities. They wrote: ''Franchisors are less inclined to work with newer franchisees or economically disadvantaged franchisees given the heightened risk of joint employer liability.'' In addition to increasing franchisee opportunities, the IFA argues that this rule would also increase the support that franchisors offer to their franchisees, which has been curtailed due to joint employment concerns. ''In the IFA Franchise Survey, 60% of franchisee respondents reported that they'd seen their interactions with franchisors regarding training affected, and close to half of the respondents witnessed changes in the advice and guidance around personnel policies and suggested templates offered them by their franchisors.'' The Chamber of Commerce and IFA cited a study conducted by a Chamber of Commerce economist that evaluated the impacts of the NLRB's proposed rule on joint employment status under the National Labor Relations Act. Dr. Ron Bird quantified the cost of franchisors ''distancing'' themselves from franchisees to be between $17.2 billion and $33.3 billion annually. Because this study was associated with the NLRB's proposed rule, the Department has not addressed these costs in the economic analysis.

The Department expects that this rule would reduce burdens on organizations. After initial rule familiarization, these revisions may reduce the time spent by organizations to determine whether they are joint employers. Likewise, clarity may reduce FLSA-related litigation regarding joint employer status, and reduce litigation among organizations regarding allocation of FLSA-related liability and damages. The rule may also promote greater uniformity among court

[97] EPI, AFL–CIO, and Farmworker Justice, for example.

[98] AFL–CIO.

[99] AFL–CIO and Farmworker Justice. Additionally, Farmworker Justice noted that workers will be less likely to report FLSA violations to the Department because they will not expect to collect any back pay.

[100] Workplace fissuring refers to increased reliance by employers on subcontractors, temporary help agencies, and labor brokers rather than hiring employees directly.

decisions, providing clarity for organizations operating in multiple jurisdictions. This uniformity could reduce organizations' costs because they would not have to consider multiple, jurisdiction-specific legal standards before entering into economic relationships.

Because the Department does not have data on the number of joint employers, and the number of joint employer situations that could be affected, cost-savings attributable to this rule have not been quantified. The Department did not receive any comments providing data needed to quantify these impacts.

VII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires that an agency prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. The agency is also required to respond to public comment on the NPRM. The Chief Counsel for Advocacy of the Small Business Administration was notified of this proposed rule upon submission of the rule to OMB under Executive Order 12866.

A. Objectives of, and Need for, the Final Rule

The Department has determined that its interpretation of joint employer status requires revision as it applies to one of the joint employer scenarios under the Act (one set of hours worked for an employer that simultaneously benefits another person). The Department is concerned that the current regulation does not adequately address this scenario, and the Department believes that its revisions would provide needed clarity and ensure consistency with the Act's text.

29 CFR part 791 contains the Department's official interpretations for determining joint employer status under the FLSA. It is intended to serve as a practical guide to employers and employees as to how the Department will look to apply it. However, the Department has not meaningfully revised this part since its promulgation in 1958, over 60 years ago.

The Department's objective is to update its joint employer rule in 29 CFR part 791 to provide guidance for determining joint employer status in one of the joint employer scenarios under the Act (one set of hours worked for an employer that simultaneously benefits another person) in a manner that is clear and consistent with section 3(d) of the Act.

B. The Agency's Response to Public Comments

Some commenters argue that the additional clarity of this rulemaking will be beneficial to small businesses. The National Federation of Independent Business wrote: ''Small and independent businesses in particular need standards for determining joint employer status that are easier to understand, and simpler and less expensive to administer, than the current standards. Small and independent businesses cannot afford the lawyers, accountants, and clerks that larger companies use to decipher complex regulations and implement costly business systems necessary to comply with the regulations; small and independent businesses mostly engage in do-it-yourself compliance.'' Similarly, the American Hotel and Lodging Association wrote: ''This clear rule would provide predictability and stability in the law, resulting in increased investment from the business community and economic growth across all sectors of the economy. Stable legal arrangements would encourage economically fruitful business-to-business relationships, which are particularly beneficial to small businesses.''

Other commenters argue that this proposed rule would hurt small businesses because the full liability for labor law violations will now fall on small businesses, whereas before some of the liability was with the larger joint employer. The Center for American Progress wrote: ''the draft regulations could let large corporations off the hook when they infringe on workers' rights, and, consequently, leave smaller companies solely liable for any workplace misdeeds and workers unprotected.'' The National Employment Law Project argues that small businesses will bear the liability without having the ability to prevent labor law violations: ''small businesses will be left to ensure compliance with the Act alone, without any assistance from the larger employer, in situations where the smaller company may not be able to ensure compliance without the cooperation of the larger lead or worksite employer.'' This would hurt both small businesses and their workers. A group of senator wrote: ''This makes DOL's proposal a free pass for large employers, all owing even those that should be joint employers as shown by the economic realities of the situation to walk away from wage-and-hour and child labor violations for which they should be held responsible, leaving smaller businesses on the hook and potentially leaving employees empty-handed.''

Similarly, the AFL–CIO wrote that the ''RFA was intended to protect small businesses'' but that the proposed rule ''is intended to protect big businesses'' and the RFA underestimates costs to small employers, including increased legal exposure and increased cost of liability insurance. The Department disagrees that this rule will result in increased liability insurance costs or that this rule favors large businesses. Nor should small businesses face greater legal exposure. Indeed, a small business may be less likely to be liable as a joint employer for wages of another business's employee under the revised rule, while its liability for wages of its own employees will remain unchanged. Accordingly, the Department acknowledges that this rule could, on average, reduce legal exposure for small businesses; however, the Department lacks data to quantify this effect. The commenter offered no method and, other than a set of questions related to the Department's processes and litigation records, offered no suggestions for how to quantify asserted costs.

The AFL–CIO also stated that the NPRM failed to analyze these additional costs to small businesses: Recordkeeping burdens related to documenting the amount of control exercised by their larger clients, decrease in the competitive ability of small businesses, and costs to assess any potential increased discordance among standards under parallel federal laws. The AFL–CIO further stated that the proposed rule will likely increase the litigation costs of small businesses. The Department disagrees that this rule will cause a competitive disadvantage to small businesses. The AFL–CIO stated that large businesses will no longer need to comply with the FLSA, giving them a competitive advantage. However, this is not true. Any business, regardless of its size, will be a joint employer under the FLSA if it meets the standard set forth in this final rule. Moreover, increased litigation costs can be avoided by ensuring compliance with the FLSA. Lastly, the Department does not believe this rule will increase any already-existing discordance with other federal laws.

The Department believes this rule will create greater willingness to engage in the use of franchising and subcontracting by providing more

clarity about what kinds of activities could result in joint employer status, which can create new small businesses and expand business for existing small businesses. These benefits to the small business community are expected to outweigh any costs.

C. Description of the Number of Small Entities to Which the Final Rule Will Apply

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by SBA, in effect as of October 1, 2017, to classify entities as small. SBA establishes separate standards for 6-digit NAICS industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. For example, small businesses are generally defined as having fewer than 500, 1,000, or 1,250 employees in manufacturing industries and less than $7.5 million in average annual receipts for nonmanufacturing industries. However, some exceptions do exist, the most notable being that depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets (small defined as less than $550 million in assets). Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.

The Department obtained data from several sources to determine the number of small entities. However, the SUSB (2012) was used for most industries (the 2012 data is the most recent SUSB data that includes information on receipts). Industries for which the Department used alternative sources include credit unions,[101] commercial banks and savings institutions,[102] agriculture,[103] and public administration.[104] The Department used the latest available data in each case, so data years differ between sources.

For each industry, the SUSB data tabulates total establishment and firm counts by both enterprise employment size (*e.g.,* 0–4 employees, 5–9 employees) and receipt size (*e.g.,* less than $100,000, $100,000–$499,999).[105] The Department combined these categories with the SBA size standards to estimate the proportion of establishments and firms in each industry that are considered small. The general methodological approach was to classify all establishments or firms in categories below the SBA cutoff as a ''small entity.'' If a cutoff fell in the middle of a defined category, the Department assumed a uniform distribution of employees across that bracket to determine what proportion should be classified as small. The Department assumed that the small entity share of credit card issuing and other depository credit intermediation institutions (which were not separately represented in FDIC asset data), is similar to that of commercial banking and savings institutions.

D. Costs for Small Entities Affected by the Final Rule

Table 2 presents the estimated number of small entities affected by the final rule. Based on the methodology described above, the Department found that 5.9 million of the 6.1 million firms (99 percent) and 6.3 million of the 7.8 million establishments (81 percent) qualify as small by SBA standards. As discussed in section V.B, these do not exclude entities that currently do not have joint employees, as those will still need to familiarize themselves with the text of the new rule. Moreover, we assume that the cost structure of regulatory familiarization will not differ between small and large entities (*i.e.,* small entities will need the same amount of time for review and will assign the same type of specialist to the task).

TABLE 2—REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AVERAGE BY FIRM AND ESTABLISHMENT

NAICS sector	By firm			By establishment		
	Firms	Percent of total	Cost per firm [a]	Establishments	Percent of total	Cost per establishment [a]
Agric./Forestry/Fishing/Hunting	18,103	82.9	53	18,717	82.8	53
Mining/Quarrying/Oil & Gas Extraction	19,625	96.6	53	21,974	80.7	53
Utilities	5,487	93.1	53	7,762	42.7	53
Construction	673,521	98.6	53	676,913	97.2	53
Manufacturing	241,932	96.8	53	264,112	90.6	53
Wholesale Trade	292,615	96.5	53	328,327	79.6	53
Retail Trade	636,069	97.7	53	688,835	64.4	53
Transportation & Warehousing	174,523	96.2	53	183,810	79.6	53
Information	73,288	96.7	53	83,559	57.1	53
Finance and Insurance	229,002	96.2	53	269,991	56.6	53
Real Estate & Rental & Leasing	293,693	97.9	53	310,740	79.6	53
Prof., Scientific, & Technical Services	790,834	98.1	53	819,115	90.7	53
Management of Companies & Ent.	18,004	66.2	53	34,124	61.6	53
Administrative & Support Services	332,072	97.4	53	347,167	84.8	53
Educational Services	87,566	95.4	53	90,559	87.6	53
Health Care & Social Assistance	638,699	96.5	53	726,524	81.6	53
Arts, Entertainment, & Recreation	123,530	97.8	53	126,281	92.0	53
Accommodation & Food Services	520,690	98.7	53	556,588	79.1	53
Other Services	681,696	98.7	53	700,496	92.9	53
State & Local Governments [b]	72,556	80.5	53	72,556	80.5	53

[101] Nat'l Credit Union Ass'n. (2012). 2012 Year End Statistics for Federally Insured Credit Unions, *https://www.ncua.gov/analysis/Pages/call-report-data/reports/chart-pack/chart-pack-2018-q1.pdf.*

[102] Fed. Depository Ins. Corp. (2018). Statistics on Depository Institutions—Compare Banks. Available at: *https://www5.fdic.gov/SDI/index.asp.* Data are from 3/31/18. Data is from 3/11/2018 for employment, and data is from 6/30/2017 for the share of firms and establishments that are ''small''.

[103] U.S. Dep't of Agric. (2019). 2017 Census of Agriculture: United States Summary and State Data: Volume 1, Geographic Area Series, Part 51. Available at: *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[104] Census of Governments. 2017. Available at: *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[105] The SUSB defines employment as of the week of March 12th of the particular year for which it is published.

TABLE 2—REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AVERAGE BY FIRM AND ESTABLISHMENT—Continued

NAICS sector	By firm			By establishment		
	Firms	Percent of total	Cost per firm [a]	Establishments	Percent of total	Cost per establishment [a]
All Industries	5,923,504	97.2	53	6,328,152	80.8	53
Average annualized costs, 7 percent discount rate						
Over 10 years			7			7
In perpetuity			3			3
Average annualized costs, 3 percent discount rate						
Over 10 years			6			6
In perpetuity			2			2

[a] Each entity is expected to allocate one hour of Compensation, Benefits, and Job Analysis Specialists' (SOC 13–1141) time for regulatory familiarization. The mean hourly rate for this occupation is $32.65 based on BLS's May 2018 Occupational Employment Statistics, and the wage load factor is 1.63 (0.46 for benefits and 0.17 for overhead). Therefore, the per-entity cost is $53.22.
[b] Government entities are not classified as firms or establishments; therefore, we use the total number of entities for both calculations.

The Department estimates that in Year 1, small entities will incur a minimum of approximately $315 million in total regulatory familiarization costs, and a maximum of approximately $337 million. Professional, Scientific, and Technical Services is the industry that will incur the highest total costs ($42.1 million to $43.6 million).

Additionally, the Department estimated average annualized costs to small entities of this rule over 10 years and in perpetuity. Over 10 years, this rule will have an average annual total cost of $42.0 million to $44.8 million, calculated at a 7 percent discount rate ($35.9 million to $38.3 million calculated at a 3 percent discount rate). In perpetuity, this rule will have an average annual total cost of $20.6 million to $22.0 million, calculated at a 7 percent discount rate ($9.2 million to $9.8 million calculated at a 3 percent discount rate).

Based on the analysis above, the Department does not expect that small entities will incur large individual costs as a result of this rule. Even though all entities will incur familiarization costs, these costs will be relatively small on a per-entity basis (an average of $53.22 per entity). Furthermore, no costs will be incurred past the first year of the promulgation of this rule. As a share of revenues, costs do not exceed 0.003 percent on average for all industries (Table 3). The industry where costs are the highest percent of revenues is Management of Companies and Enterprises where costs range from a lower bound of 0.014 percent to an upper bound of 0.027 percent of revenues. Additionally, the Department calculated the revenue per firm/establishment for entities with 0 to 4 employees, as per SUSB data. The industry that has the smallest revenue per entity is Accommodation and Food Services (NAICS 72)—$226,700 per firm and $226,200 per establishment, in 2018 dollars. In this industry, the per-entity cost ($53) is 0.023% to 0.024% of revenue. Accordingly, the Department does not expect that this rule would have a significant economic cost impact on a substantial number of small entities.

TABLE 3—TOTAL REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AS SHARE OF REVENUES

NAICS sector	Total revenue for small entities (millions) [a]	Cost as percent of revenue [c]	
		By firms (%)	By establishments (%)
Agriculture, Forestry, Fishing & Hunting	$22,481	0.004	0.004
Mining, Quarrying, & Oil/Gas Extraction	187,432	0.001	0.001
Utilities	127,789	0.000	0.000
Construction	771,322	0.005	0.005
Manufacturing	1,878,572	0.001	0.001
Wholesale Trade	2,644,028	0.001	0.001
Retail Trade	1,451,679	0.002	0.003
Transportation & Warehousing	241,043	0.004	0.004
Information	202,889	0.002	0.002
Finance & Insurance	266,724	0.005	0.005
Real Estate & Rental & Leasing	200,375	0.008	0.008
Professional, Scientific, & Technical Services	650,998	0.006	0.007
Management of Companies & Enterprises	6,641	0.014	0.027
Administrative & Support Services	265,743	0.007	0.007
Educational Services	81,623	0.006	0.006
Health Care & Social Assistance	643,098	0.005	0.006
Arts, Entertainment, & Recreation	95,085	0.007	0.007
Accommodation & Food Services	376,423	0.007	0.008
Other Services (except Public Administration)	377,251	0.010	0.010
State & Local Governments	[b]	[b]	[b]

TABLE 3—TOTAL REGULATORY FAMILIARIZATION COSTS FOR SMALL ENTITIES, AS SHARE OF REVENUES—Continued

NAICS sector	Total revenue for small entities (millions) [a]	Cost as percent of revenue [c]	
		By firms (%)	By establishments (%)
All Industries	10,491,197	0.003	0.003

[a] Revenues estimated based on the 2012 Survey of U.S. Businesses published by the Census Bureau, inflated to 2018 dollars using the GDP deflator.
[b] Government entities are considered small if the relevant population is less than 50,000. Government revenue data are not readily available by size of government entity.
[c] Calculated by dividing total revenues per industry by total costs per industry, by firm and by establishment, as shown in Table 2.

F. Analysis of Regulatory Alternatives

The Department considered alternative tests for the first joint employer scenario—where an employee works one set of hours that simultaneously benefits another person. Those alternative tests, such as the Second and Fourth Circuits' joint employer tests, have more factors than the Department's proposed test, may have a second step, and rely substantially on the ''suffer or permit'' language in FLSA section 3(g).[106] The Department, however, believes that section 3(d), not section 3(g), is the touchstone for joint employer status and that its proposed four-factor balancing test is preferable, in part because it is consistent with section 3(d). The Department's test is simpler and easier to apply because it has fewer factors and only one step, whereas the alternative tests involve a consideration of additional factors and are therefore more complex and indeterminate.

The Department also considered applying the four-factor balancing test in *Bonnette* without modification. The Department instead specifies a four-factor test that tracks the language of *Bonnette* with modifications to the first and second factors and additional guidance regarding the fourth factor. For example, whereas the *Bonnette* test considers whether the potential joint employer had the ''power'' to hire and fire, the Department's test states that whether the employer actually exercised the power to hire and fire is a clearer indicator of joint employer status than having the right to do so. The Department believes that this modification will help ensure that its joint employer test is fully consistent with the text of section 3(d), which requires a potential joint employer to be ''acting . . . in relation to an employee.'' [107] By rooting the joint employer standard in the text of the statute, the Department believes that its rule could provide workers and organizations with more clarity in determining who is a joint employer under the Act, thereby promoting innovation and certainty in businesses relationships.

VIII. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) [108] requires agencies to prepare a written statement for rules that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation using the CPI–U) or more in at least one year. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This rule is issued pursuant to the FLSA, 29 U.S.C. 201, *et seq.*

B. Assessment of Quantified [109] Costs and Benefits

For purposes of the UMRA, this rule includes a federal mandate that is expected to result in increased expenditures by the private sector of more than $165 million in at least one year, but the rule will not result in increased expenditures by state, local, and tribal governments, in the aggregate, of $165 million or more in any one year.

Based on the cost analysis in this final rule, the Department determined that the rule will result in Year 1 total costs for state and local governments totaling $4.8 million, all of them incurred for regulatory familiarization (*see* Table 1). There will be no additional costs incurred in subsequent years.

The Department determined that the proposed rule will result in Year 1 total costs for the private sector between $319.4 million and $411.9 million, all of them incurred for regulatory familiarization. There will be no additional costs incurred in subsequent years.

UMRA requires agencies to estimate the effect of a regulation on the national economy if, at its discretion, such estimates are reasonably feasible and the effect is relevant and material.[110] However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of GDP, or in the range of $51.5 billion to $102.9 billion (using 2018 GDP). A regulation with smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's RIA estimates that the total costs of the proposed rule will be between $324.2 million and $416.7 million (*see* Table 1). All costs will occur in the first year of the promulgation of this rule, and there will be no additional costs in subsequent years. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy.

C. Response to Comments

The Department received few comments on the proposed rule from state and local government entities. The New York City Department of Consumer Affairs took issue with the NPRM's restriction of definitions under the Fair Labor Standards Act, arguing that the

[106] *See Zheng,* 355 F.3d at 69; *Salinas,* 848 F.3d at 136.
[107] 29 U.S.C. 203(d).
[108] *See* 2 U.S.C. 1501.
[109] Only the rule familiarization cost is quantified, but the Department believes that there are potential cost savings that it could not quantify due to lack of data at this time.
[110] *See* 2 U.S.C. 1532(a)(4).

proposed rule ''would ignore decades of legal precedent in which courts have appropriately combined the three definitions to establish a comprehensive definition of an employment relationship, and the intent of Congress in including such definitions in the Act.'' The State of Washington Department of Labor and Industries agreed, stating, ''Since both Congress and the Supreme Court have spoken on the definition of 'employee' under FLSA, the DOL's proposal conflicts with Congress' intent and with settled law to narrow and limit the test. DOL cannot change an existing statutory definition by issuing a new interpretation or rule.'' The Coalition of State AGs concurred, writing, ''DOL violates long-standing tenets of statutory interpretation and ignores the common law development of the joint-employment doctrine in an attempt to support an overly narrow reading of the FLSA.''

The New York City Department of Consumer Affairs also expressed concern that the proposed rule will undercut the protections of the FLSA because ''narrowing circumstances when a joint employment relationship is established will have a domino effect on state and local laws, weakening worker protections.'' The Coalition of State AGs espoused that the proposed rule was also too narrow, stating, ''A broad interpretation of joint employment under the FLSA would hold all parties violating labor standards accountable—both subsidiary businesses that are cutting paychecks and lead businesses that control or have the ability to control working conditions and pay.''

The Coalition of State AGs was concerned on the NPRM's effect on the workforce as a whole, writing, ''Besides the myriad negative effects the fissuring workplace has had on workers' wages, benefits, and safety, it also harms businesses and employers. Most employers want to follow the law and pay their workers a fair wage. However, today's workplace structures incentivize a race to the bottom, leading conscientious employers to lose out on contracts to lower-bidding companies that may be able to offer lower bids, at least in part by violating wage and hour laws and failing to contribute to social safety nets.'' The State of Washington Department of Labor and Industries was concerned about the NPRM's effect on workers, noting, ''Given the realities of the modern workforce, the proposed rule will reduce worker protections, provide less accountability for employers to ensure compliance with labor laws, and is inconsistent with DOL's mandate and with settled law under FLSA.'' A group of Massachusetts legislators echoed that concern, stating, ''By limiting the accountability certain businesses have to their labor force, the proposed change will encourage these businesses to turn a blind eye to the detrimental practices of affiliated entities. In turn, this will mean that even more workers will suffer from wage theft, with few options for potential recourse.''

The substantive arguments in these comments are not specific to state and local governments and are similar to arguments made in numerous other comments opposing the proposed rule. As such, the Department has responded to these arguments elsewhere in this final rule.

D. Least Burdensome Option Explained

The Department believes that it has chosen the least burdensome but still cost-effective methodology to revise its rule for determining joint employer status under the FLSA consistent with the Department's statutory obligation. Although the regulation would impose costs for regulatory familiarization, the Department believes that its revisions would reduce the overall burden on organizations by simplifying the standard for determining joint employer status. The Department believes that, after familiarization, this rule may reduce the time spent by organizations to determine whether they are joint employers. Additionally, revising the Department's guidance to provide more clarity could promote innovation and certainty in business relationships.

IX. Executive Order 13132, Federalism

The Department has (1) reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The rule would 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.

X. Executive Order 13175, Indian Tribal Governments

This rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 791

Wages.

Signed at Washington, DC, this 27th day of December, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor amends title 29 of the Code of Federal Regulations by revising part 791 to read as follows:

PART 791—JOINT EMPLOYER STATUS UNDER THE FAIR LABOR STANDARDS ACT

Sec.

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

§ 791.1 Introductory statement.

This part contains the Department of Labor's general interpretations of the text governing joint employer status under the Fair Labor Standards Act. *See* 29 U.S.C. 201–19. The Administrator of the Wage and Hour Division will use these interpretations to guide the performance of his or her duties under the Act, and intends the interpretations to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the Act. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to joint employer status under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. These interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, notwithstanding that after any such act or omission in the course of such reliance, any such interpretation in revised part 791 ''is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259.

§ 791.2 Determining Joint Employer Status under the FLSA.

There are two joint employer scenarios under the FLSA.

(a)(1) In the first joint employer scenario, the employee has an employer who suffers, permits, or otherwise employs the employee to work, *see* 29 U.S.C. 203(e)(1), (g), but another person simultaneously benefits from that work. The other person is the employee's joint employer only if that person is acting directly or indirectly in the interest of the employer in relation to the employee. *See* 29 U.S.C. 203(d). In this situation, the following four factors are relevant to the determination. Those

four factors are whether the other person:

(i) Hires or fires the employee;

(ii) Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;

(iii) Determines the employee's rate and method of payment; and

(iv) Maintains the employee's employment records.

(2) As used in this section, ''employment records'' means records, such as payroll records, that reflect, relate to, or otherwise record information pertaining to the hiring or firing, supervision and control of the work schedules or conditions of employment, or determining the rate and method of payment of the employee. Except to the extent they reflect, relate to, or otherwise record that information, records maintained by the potential joint employer related to the employer's compliance with the contractual agreements identified in paragraphs (d)(3) and (4) of this section do not make joint employer status more or less likely under the Act and are not considered employment records under this section. Satisfaction of the maintenance of employment records factor alone will not lead to a finding of joint employer status.

(3)(i) The potential joint employer must actually exercise—directly or indirectly—one or more of these indicia of control to be jointly liable under the Act. *See* 29 U.S.C. 203(d). The potential joint employer's ability, power, or reserved right to act in relation to the employee may be relevant for determining joint employer status, but such ability, power, or right alone does not demonstrate joint employer status without some actual exercise of control. Standard contractual language reserving a right to act, for example, is alone insufficient for demonstrating joint employer status. No single factor is dispositive in determining joint employer status under the Act. Whether a person is a joint employer under the Act will depend on how all the facts in a particular case relate to these factors, and the appropriate weight to give each factor will vary depending on the circumstances of how that factor does or does not suggest control in the particular case.

(ii) Indirect control is exercised by the potential joint employer through mandatory directions to another employer that directly controls the employee. But the direct employer's voluntary decision to grant the potential joint employer's request, recommendation, or suggestion does not constitute indirect control that can demonstrate joint employer status. Acts that incidentally impact the employee also do not indicate joint employer status.

(b) Additional factors may be relevant for determining joint employer status in this scenario, but only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee's work.

(c) Whether the employee is economically dependent on the potential joint employer is not relevant for determining the potential joint employer's liability under the Act. Accordingly, to determine joint employer status, no factors should be used to assess economic dependence. Examples of factors that are not relevant because they assess economic dependence include, but are not limited to:

(1) Whether the employee is in a specialty job or a job that otherwise requires special skill, initiative, judgment, or foresight;

(2) Whether the employee has the opportunity for profit or loss based on his or her managerial skill;

(3) Whether the employee invests in equipment or materials required for work or the employment of helpers; and

(4) The number of contractual relationships, other than with the employer, that the potential joint employer has entered into to receive similar services.

(d)(1) A joint employer may be an individual, partnership, association, corporation, business trust, legal representative, public agency, or any organized group of persons, excluding any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such a labor organization. *See* 29 U.S.C. 203(a), (d).

(2) Operating as a franchisor or entering into a brand and supply agreement, or using a similar business model does not make joint employer status more likely under the Act.

(3) The potential joint employer's contractual agreements with the employer requiring the employer to comply with specific legal obligations or to meet certain standards to protect the health or safety of its employees or the public do not make joint employer status more or less likely under the Act. Similarly, the monitoring and enforcement of such contractual agreements against the employer does not make joint employer status more or less likely under the Act. Such contractual agreements include, but are not limited to, mandating that employers comply with their obligations under the FLSA or other similar laws; or institute sexual harassment policies; requiring background checks; or requiring employers to establish workplace safety practices and protocols or to provide workers training regarding matters such as health, safety, or legal compliance. Requiring the inclusion of such standards, policies, or procedures in an employee handbook does not make joint employer status more or less likely under the Act.

(4) The potential joint employer's contractual agreements with the employer requiring quality control standards to ensure the consistent quality of the work product, brand, or business reputation do not make joint employer status more or less likely under the Act. Similarly, the monitoring and enforcement of such agreements against the employer does not make joint employer status more or less likely under the Act. Such contractual agreements include, but are not limited to, specifying the size or scope of the work project, requiring the employer to meet quantity and quality standards and deadlines, requiring morality clauses, or requiring the use of standardized products, services, or advertising to maintain brand standards.

(5) The potential joint employer's practice of providing the employer a sample employee handbook, or other forms, to the employer; allowing the employer to operate a business on its premises (including ''store within a store'' arrangements); offering an association health plan or association retirement plan to the employer or participating in such a plan with the employer; jointly participating in an apprenticeship program with the employer; or any other similar business practice, does not make joint employer status more or less likely under the Act.

(e)(1) In the second joint employer scenario, one employer employs a worker for one set of hours in a workweek, and another employer employs the same worker for a separate set of hours in the same workweek. The jobs and the hours worked for each employer are separate, but if the employers are joint employers, both employers are jointly and severally liable for all of the hours the employee worked for them in the workweek.

(2) In this second scenario, if the employers are acting independently of each other and are disassociated with respect to the employment of the employee, each employer may disregard all work performed by the employee for the other employer in determining its own responsibilities under the Act. However, if the employers are sufficiently associated with respect to the employment of the employee, they

are joint employers and must aggregate the hours worked for each for purposes of determining compliance with the Act. The employers will generally be sufficiently associated if:

(i) There is an arrangement between them to share the employee's services;

(ii) One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or

(iii) They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer. Such a determination depends on all of the facts and circumstances. Certain business relationships, for example, which have little to do with the employment of specific workers—such as sharing a vendor or being franchisees of the same franchisor—are alone insufficient to establish that two employers are sufficiently associated to be joint employers.

(f) For each workweek that a person is a joint employer of an employee, that joint employer is jointly and severally liable with the employer and any other joint employers for compliance with all of the applicable provisions of the Act, including the overtime provisions, for all of the hours worked by the employee in that workweek. In discharging this joint obligation in a particular workweek, the employer and joint employers may take credit toward minimum wage and overtime requirements for all payments made to the employee by the employer and any joint employers.

(g) The following illustrative examples demonstrate the application of the principles described in paragraphs (a) through (f) of this section under the facts presented and are limited to substantially similar factual situations:

(1)(i) *Example.* An individual works 30 hours per week as a cook at one restaurant establishment, and 15 hours per week as a cook at a different restaurant establishment affiliated with the same nationwide franchise. These establishments are locally owned and managed by different franchisees that do not coordinate in any way with respect to the employee. Are they joint employers of the cook?

(ii) *Application.* Under these facts, the restaurant establishments are not joint employers of the cook because they are not associated in any meaningful way with respect to the cook's employment. The similarity of the cook's work at each restaurant, and the fact that both restaurants are part of the same nationwide franchise, are not relevant to the joint employer analysis, because those facts have no bearing on the question whether the restaurants are acting directly or indirectly in each other's interest in relation to the cook.

(2)(i) *Example.* An individual works 30 hours per week as a cook at one restaurant establishment, and 15 hours per week as a cook at a different restaurant establishment owned by the same person. Each week, the restaurants coordinate and set the cook's schedule of hours at each location, and the cook works interchangeably at both restaurants. The restaurants decided together to pay the cook the same hourly rate. Are they joint employers of the cook?

(ii) *Application.* Under these facts, the restaurant establishments are joint employers of the cook because they share common ownership, coordinate the cook's schedule of hours at the restaurants, and jointly decide the cook's terms and conditions of employment, such as the pay rate. Because the restaurants are sufficiently associated with respect to the cook's employment, they must aggregate the cook's hours worked across the two restaurants for purposes of complying with the Act.

(3)(i) *Example.* An office park company hires a janitorial services company to clean the office park building after-hours. According to a contractual agreement between the office park and the janitorial company, the office park agrees to pay the janitorial company a fixed fee for these services and reserves the right to supervise the janitorial employees in their performance of those cleaning services. However, office park personnel do not set the janitorial employees' pay rates or individual schedules and do not in fact supervise the workers' performance of their work in any way. Is the office park a joint employer of the janitorial employees?

(ii) *Application.* Under these facts, the office park is not a joint employer of the janitorial employees because it does not hire or fire the employees, determine their rate or method of payment, or exercise control over their conditions of employment. The office park's reserved contractual right to control the employee's conditions of employment is not enough to establish that it is a joint employer.

(4)(i) *Example.* A restaurant contracts with a cleaning company to provide cleaning services. The contract does not give the restaurant authority to hire or fire the cleaning company's employees or to supervise their work on the restaurant's premises. A restaurant official provides general instructions to the team leader from the cleaning company regarding the tasks that need to be completed each workday, monitors the performance of the company's work, and keeps records tracking the cleaning company's completed assignments. The team leader from the cleaning company provides detailed supervision. At the restaurant's request, the cleaning company decides to terminate an individual worker for failure to follow the restaurant's instructions regarding customer safety. Is the restaurant a joint employer of the cleaning company's employees?

(ii) *Application.* Under these facts, the restaurant is not a joint employer of the cleaning company's employees because the restaurant does not exercise significant direct or indirect control over the terms and conditions of their employment. The restaurant's daily instructions and monitoring of the cleaning work is limited and does not demonstrate that the restaurant is a joint employer. Records of the cleaning team's work are not employment records under paragraph (a)(1)(iv) of this section, and therefore, are not relevant in determining joint employer status. While the restaurant requested the termination of a cleaning company employee for not following safety instructions, the decision to terminate was made voluntarily by the cleaning company and therefore is not indicative of indirect control.

(5)(i) *Example.* A restaurant contracts with a cleaning company to provide cleaning services. The contract does not give the restaurant authority to hire or fire the cleaning company's employees or to supervise their work on the restaurant's premises. However, in practice a restaurant official oversees the work of employees of the cleaning company by assigning them specific tasks throughout each day, providing them with hands-on instructions, and keeping records tracking the work hours of each employee. On several occasions, the restaurant requested that the cleaning company hire or terminate individual workers, and the cleaning company agreed without question each time. Is the restaurant a joint employer of the cleaning company's employees?

(ii) *Application.* Under these facts, the restaurant is a joint employer of the cleaning company's employees because the restaurant exercises sufficient control, both direct and indirect, over the terms and conditions of their employment. The restaurant directly supervises the cleaning company's employees' work on a regular basis and keeps employment records. And the cleaning company's repeated and unquestioned acquiescence to the restaurant's hiring and firing requests

indicates that the restaurant exercised indirect control over the cleaning company's hiring and firing decisions.

(6)(i) *Example.* A packaging company requests workers on a daily basis from a staffing agency. Although the staffing agency determines each worker's hourly rate of pay, the packaging company closely supervises their work, providing hands-on instruction on a regular and routine basis. The packaging company also uses sophisticated analysis of expected customer demand to continuously adjust the number of workers it requests and the specific hours for each worker, sending workers home depending on workload. Is the packaging company a joint employer of the staffing agency's employees?

(ii) *Application.* Under these facts, the packaging company is a joint employer of the staffing agency's employees because it exercises sufficient control over their terms and conditions of employment by closely supervising their work and controlling their work schedules.

(7)(i) *Example.* A packaging company has unfilled shifts and requests a staffing agency to identify and assign workers to fill those shifts. Like other clients, the packaging company pays the staffing agency a fixed fee to obtain each worker for an 8-hour shift. The staffing agency determines the hourly rate of pay for each worker, restricts all of its workers from performing more than five shifts in a week, and retains complete discretion over which workers to assign to fill a particular shift. Workers perform their shifts for the packaging company at the company's warehouse under limited supervision from the packaging company to ensure that minimal quantity, quality, and workplace safety standards are satisfied, and under more strict supervision from a staffing agency supervisor who is on site at the packaging company. Is the packaging company a joint employer?

(ii) *Application.* Under these facts, the packaging company is not a joint employer of the staffing agency's employees because the staffing agency exclusively determines the pay and work schedule for each employee. Although the packaging company exercises some control over the workers by exercising limited supervision over their work, such supervision, especially considering the staffing agency's supervision, is alone insufficient to establish that the packaging company is a joint employer without additional facts to support such a conclusion.

(8)(i) *Example.* An Association, whose membership is subject to certain criteria such as geography or type of business, provides optional group health coverage and an optional pension plan to its members to offer to their employees. Employer B and Employer C both meet the Association's specified criteria, become members, and provide the Association's optional group health coverage and pension plan to their respective employees. The employees of both B and C choose to opt in to the health and pension plans. Does the participation of B and C in the Association's health and pension plans make the Association a joint employer of B's and C's employees, or B and C joint employers of each other's employees?

(ii) *Application.* Under these facts, the Association is not a joint employer of B's or C's employees, and B and C are not joint employers of each other's employees. Participation in the Association's optional plans does not involve any control by the Association, direct or indirect, over B's or C's employees. And while B and C independently offer the same plans to their respective employees, there is no indication that B and C are coordinating, directly or indirectly, to control the other's employees. B and C are therefore not acting directly or indirectly in the interest of the other in relation to any employee.

(9)(i) *Example.* Entity A, a large national company, contracts with multiple other businesses in its supply chain. Entity A does not hire, fire, or supervise the employees of its suppliers, and the supply agreements do not grant Entity A the authority to do so. Entity A also does not maintain any employment records of suppliers' employees. As a precondition of doing business with A, all contracting businesses must agree to comply with a code of conduct, which includes a minimum hourly wage higher than the federal minimum wage, as well as a promise to comply with all applicable federal, state, and local laws. Employer B contracts with A and signs the code of conduct. Does A qualify as a joint employer of B's employees?

(ii) *Application.* Under these facts, A is not a joint employer of B's employees. Entity A is not acting directly or indirectly in the interest of B in relation to B's employees—hiring, firing, maintaining records, or supervising or controlling work schedules or conditions of employment. Nor is A exercising significant control over Employer B's rate or method of pay—although A requires B to maintain a wage floor, B retains control over how and how much to pay its employees, and the example does not indicate that the wage floor is accompanied by any other indicia of control. Finally, because there is no indication that A's requirement that B commit to comply with all applicable federal, state, and local law exerts any direct or indirect control over B's employees, this requirement has no bearing on the joint employer analysis.

(10)(i) *Example.* Franchisor A is a global organization representing a hospitality brand with several thousand hotels under franchise agreements. Franchisee B owns one of these hotels and is a licensee of A's brand, which gives Franchisee B access to certain proprietary software for business operation or payroll processing. In addition, A provides B with a sample employment application, a sample employee handbook, and other forms and documents for use in operating the franchise, such as sample operational plans, business plans, and marketing materials. The licensing agreement is an industry-standard document explaining that B is solely responsible for all day-to-day operations, including hiring and firing of employees, setting the rate and method of pay, maintaining records, and supervising and controlling conditions of employment. Is A a joint employer of B's employees?

(ii) *Application.* Under these facts, A is not a joint employer of B's employees. A does not exercise direct or indirect control over B's employees. Providing optional samples, forms, and documents that relate to staffing and employment does not amount to direct or indirect control over B's employees that would establish joint liability.

(11)(i) *Example.* A retail company owns and operates a large store. The retail company contracts with a cell phone repair company, allowing the repair company to run its business operations inside the building in an open space near one of the building entrances. As part of the arrangement, the retail company requires the repair company to establish a policy of wearing specific shirts and to provide shirts to its employees that look substantially similar to the shirts worn by employees of the retail company. Additionally, the contract requires the repair company to institute a code of conduct for its employees stating that the employees must act professionally in their interactions with all customers on the premises. Is the retail company a joint employer of the repair company's employees?

(ii) *Application.* Under these facts, the retail company is not a joint employer of the cell phone repair company's employees. The retail company's requirement that the repair company provide specific shirts to its employees and establish a policy that its employees

to wear those shirts does not, on its own, demonstrate substantial control over the repair company's employees' terms and conditions of employment. Moreover, requiring the repair company to institute a code of conduct or allowing the repair company to operate on its premises does not make joint employer status more or less likely under the Act. There is no indication that the retail company hires or fires the repair company's employees, controls any other terms and conditions of their employment, determines their rate and method of payment, or maintains their employment records.

§ 791.3 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from part 791 and shall not affect the remainder thereof.

[FR Doc. 2019–28343 Filed 1–13–20; 8:45 am]

BILLING CODE 4510–27–P

FEDERAL REGISTER

Vol. 85 Thursday,
No. 11 January 16, 2020

Part III

Department of Agriculture

Forest Service

36 Part 216

Public Notice and Comment for Forest Service Directives; Rule and Forest Service Handbook 1109.12; Directive System Handbook; Providing Notice and Opportunity to Comment on Forest Service Directives; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 216

Public Notice and Comment for Forest Service Directives

AGENCY: Forest Service, USDA.

ACTION: Technical corrections to final rule.

SUMMARY: The United States Department of Agriculture (USDA) is affirming the final rule that appeared in the **Federal Register** on March 30, 2018, with technical corrections. One of the technical corrections responds to comments received during the comment period for the final rule, and the other removes a phrase that does not apply.

DATES: Technical corrections to the final rule at 36 CFR part 216 are effective January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Program Analyst, Directives and Regulations, Office of Regulatory and Management Services, *michael.migliori@usda.gov,* (202) 205–2496. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Response to Comments on Final 36 CFR part 216

The Forest Service received 74 comments on final 36 CFR part 216 (83 FR 13646). A record of all comments received on the final rule can be accessed at the Forest Service Regulations and Policies web page via *https://www.fs.fed.us/about-agency/regulations-policies.* The Department's summary response to those comments that are within the scope of the final rule and substantive is posted at the Forest Service Regulations and Policies web page at *https://www.fs.fed.us/about-agency/regulations-policies.*

Definition of a Directive

One commenter noted that the definition of a directive in 36 CFR 216.2, which is limited to directives issued ''by the Office of the Chief,'' is too narrow, since field officials issue directive supplements that may require public notice and opportunity to comment.

The Department agrees. The Department has removed the phrase ''by the Office of the Chief'' from § 216.2 consistent with existing regulations at 36 CFR 200.4(c), which provide for directive supplements issued by certain field officials, as well as national directives issued by the Chief. This technical correction clarifies that final 36 CFR part 216 applies to directive supplements, as well as to national directives.

Inapplicable Phrase

As currently written, § 216.3(b) of the final rule prescribes certain procedures for public comments, as well as public notices, required by the final rule. The reference to public comments in § 216.3(b) has been removed, since public comments are not required under the final rule. Rather, the final rule requires public notice and opportunity for comment on Forest Service directives as provided in the final rule.

List of Subjects in 36 CFR Part 216

Administrative practice and procedure, National forests.

Therefore, for the reasons set out in the preamble, the Department is affirming the final rule at part 216 of title 36 of the Code of Federal Regulations, with the following technical corrections:

PART 216—PUBLIC NOTICE AND COMMENT FOR STANDARDS, CRITERIA, AND GUIDANCE APPLICABLE TO FOREST SERVICE PROGRAMS

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

Authority: 16 U.S.C. 1612(a).

■ 2. Section 216.2 is revised to read as follows:

§ 216.2 Definition.

Directive means the contents of the Forest Service Manual and Forest Service Handbooks issued as described at 36 CFR 200.4(c).

■ 3. Section 216.3(b) is revised to read as follows:

§ 216.3 Notice and opportunity for public comment.

* * * * *

(b) Notices required by paragraph (a) of this section shall:

(1) Be published on a schedule for proposed directives and interim directives maintained by the Forest Service in a centralized repository on the Forest Service website.

(2) Provide a physical mailing address and an internet address or similar online resource for submitting comments.

* * * * *

Dated: December 3, 2019.

J. Lenise Lago,

Associate Chief.

[FR Doc. 2020–00666 Filed 1–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Handbook 1109.12; Directive System Handbook; Providing Notice and Opportunity To Comment on Forest Service Directives

AGENCY: Forest Service, USDA.

ACTION: Notice of availability for public comment.

SUMMARY: The United States Department of Agriculture (USDA), United States Forest Service (Forest Service), is issuing proposed directives on providing notice and opportunity to comment on Forest Service directives. The proposed directives would implement recently revised Forest Service regulations governing public notice and comment on Forest Service directives.

DATES: Comments must be received in writing by March 16, 2020.

ADDRESSES: Comments may be submitted electronically to *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2016.* Written comments may be mailed to Michael Migliori, Program Analyst, Office of Regulatory and Management Services, 201 14th Street SW, Washington, DC 20024. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2016.*

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Program Analyst, 202–205–2496 or *michael.migliori@usda.gov.* Individuals using telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This proposed directive would set forth direction for providing public notice of and opportunity to comment on Forest Service directives. Specifically, this chapter provides direction for determining whether a directive requires public notice and opportunity for comment, procedures for providing public notice and opportunity to comment on directives, strategies for engaging the public in development of Forest Service directives, interagency and intergovernmental communication, including tribal consultation, consideration of public comments, and finalizing directives.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of this proposed directive in the development of the final directive. A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's web page at *https://www.fs.fed.us/about-agency/regulations-policies/comment-on-directives.*

Dated: January 13, 2020.

Claudette Fernandez,

Deputy Chief, Business Operations.

[FR Doc. 2020–00668 Filed 1–15–20; 8:45 am]

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Federal Register

Vol. 85, No. 11

Thursday, January 16, 2020

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FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

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.

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 January 10, 2020

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