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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

[Docket No. NRCS–2019–0020]

RIN 0578–AA67

Conservation Stewardship Program (CSP)

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule adopts, with minor changes, an interim rule published in the *Federal Register* on November 12, 2019. The interim rule implemented changes to CSP that were necessitated by enactment of the Agriculture Improvement Act of 2018 (2018 Farm Bill) or that were required to implement administrative improvements and clarifications. The Natural Resources Conservation Service (NRCS) received input from 110 commenters who provided 615 comments in response to the interim rule. This final rule makes permanent those changes appearing in the interim rule, responds to comments, and makes further adjustments in response to some of the comments received. In addition, the rule makes some minor technical corrections.

DATES: *Effective:* October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Whitt. Phone: (202) 690–2267 or email: michael.whitt@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Food, Conservation, and Energy Act of 2008 amended the Food Security Act of 1985 to establish CSP and the Agricultural Act of 2014 (2014 Farm

Bill) reauthorized and revised CSP through fiscal year (FY 2018). The Agriculture Improvement Act of 2018 (2018 Farm Bill) moved CSP from subchapter B of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 to a new subchapter B of chapter 4 of subtitle D of title XII of the Food Security Act of 1985, reauthorized CSP through FY 2023, and then repealed subchapter B of chapter 2 as amended. On November 12, 2019, NRCS published an interim rule with request for comments in the *Federal Register* (84 FR 60883–60900; referred to below as the interim rule) that implemented mandatory changes made by the 2018 Farm Bill or that were required to implement administrative improvements and clarifications. This final rule adopts, with minor changes, the interim rule.

Discussion of CSP (7 CFR Part 1470)

CSP encourages producers to address priority resource concerns and improve and conserve the quality and condition of natural resources in a comprehensive manner by:

- (1) Undertaking additional conservation activities and
- (2) Improving, maintaining, and managing existing conservation activities.

The Secretary of Agriculture delegated authority to the Chief, NRCS, to administer CSP.

Through CSP, NRCS provides financial and technical assistance to eligible producers to conserve and enhance soil, water, air, and related natural resources on their land. Eligible lands include private or Tribal cropland, grassland, pastureland, rangeland, nonindustrial private forest lands, and other land in agricultural areas (including cropped woodland, marshes, and agricultural land or land capable of being used for the production of livestock) on which resource concerns related to agricultural production could be addressed. Eligible lands also include lands associated with these private or Tribal agricultural lands on which a priority resource concern can be addressed through a CSP contract. Participation in CSP is voluntary. NRCS accepts applications for classic CSP at any time, with one cutoff period in the first quarter of each fiscal year. NRCS may also accept applications for renewal from a participant in the first half of the fifth

year of the contract period. NRCS then ranks and makes funding decisions based on the applications received on or before the established cutoff date. Depending upon the availability of funds and the number of high-quality applications received during the first ranking and selection period, NRCS may establish additional ranking and selection periods during the remainder of the fiscal year.

The interim rule:

- Removed text that addressed CSP implementation under the Regional Conservation Partnership Program (RCPP) since the 2018 Farm Bill removed the requirement that RCPP be implemented through CSP and the other “covered programs.”

- Removed reference to the CSP acreage cap and dollar-amount-per-acre limit.

- Added definitions to reflect 2018 Farm Bill changes: Advanced grazing management, comprehensive conservation plan, and management-intensive rotational grazing.

- Addressed State organic allocations, which will be based on the number of organic and transitioning-to-organic operations in a State and the number of organic and transitioning-to-organic acres in a State.

- Required that if two or more applications receive the same ranking, they be ranked on the extent to which actual and anticipated conservation benefits from each contract are provided at the lowest cost relative to the other similar offers.

- Added advanced grazing management as a type of supplemental payment.

- Included text for the one-time payment option for development of a comprehensive conservation plan.

- Incorporated text about opportunity for participants to renew their contracts in the first half of the fifth year of the 5-year contract.

- Outlined implementation of the new CSP-Grassland Conservation Initiative (GCI).

In addition to incorporating the changes made by the 2018 Farm Bill, the interim rule incorporated the following programmatic changes:

- Removed identification of the NRCS Chief as a Vice President of the Commodity Credit Corporation.

- Modified existing terms to reflect changes in terminology, to more closely

align CSP administration with the Environmental Quality Incentives Program (EQIP), and for clarity. These include, but are not limited to—

- Modifying “eligible land” to include public land when the land is a working component of the participant’s agricultural or forestry operation.

- Modifying the definition of “veteran farmers or ranchers” to cite the statutory reference as modified by the 2018 Farm Bill.

- Clarifying “enhancement,” “participant,” and “stewardship threshold.”

- Specified eligibility requirements for all applicants sharing in the risk and participating in day-to-day activities.

- Expanded the potential scope of bundles and provides NRCS with discretionary authority for offering bundles.

- Removed certain requirements for applicants who cross ranking pool boundaries to increase applicant flexibility.

- Added organic producers and producers transitioning to organic as a category of producer with a targeted ranking pool.

- Clarified the annual payment structure and adjusted the timeframe for implementing an applicant’s first conservation activity to align with EQIP.

- Stated that, unless a waiver is granted, participants will not receive payment for conservation activities initiated or implemented prior to contract approval.

- Expanded the regulatory \$400,000 contract limit for all joint operations.

- Added text to allow for contract increases due to minor adjustments made to conservation activities at the discretion of NRCS.

- Provided greater consideration to a participant’s circumstances with respect to changes made to their agricultural operations.

- Addressed contract changes that arise due to the death, incompetence, or disappearance of a CSP participant.

- Included an eligibility restriction for renewal-eligible participants who choose not to renew in favor of competing for a new contract.

- Removed text related to training NRCS staff.

- Adjusted definitions to conform to those in other NRCS or Department regulations.

Summary of Comments

The interim rule 60-day comment period ended January 13, 2020. NRCS received 615 comments from 110 commenters in response to the rule. NRCS reviewed these 615 comments and categorized and summarized them

according to the topics identified below. The topics that generated the greatest response were on payments, contract renewals and extensions, and ranking.

In this rule, the comments have been organized in alphabetic order by topic. The topics include:

- Administration—Timing, Training, and Streamlining and Flexibility;
- Conservation Activities;
- Contract Renewals and Extensions—Incentives for Renewal, Ranking, and Single Renewal;
- Definitions;
- Eligibility—Activities, Land, and Producer;
- Funding;
- Grassland Conservation Initiative;
- Local and Regional Priorities;
- Organic and Transitioning to Organic;
- Outreach;
- Payment and Contract Limits;
- Payments—Comprehensive Conservation Plan Payment, Early Start Waiver, Land Use Requirements, Minimum Payment, Payment Factors, Payment Rates, Payment Schedules, Stewardship Threshold, and Supplemental Payment;
- Ranking—Criteria, Ranking Pools, and Timing;
- Soil Health;
- Source Water Protection; and
- Technology.

Of the 615 comments raised by the commenters, 45 were general in nature and most expressed support for CSP or how CSP has benefitted particular operations. NRCS also received 54 comments raised by the commenters that were either outside the scope of the changes that NRCS made in the interim rule, expressed specific support for various provisions in the rule, or did not advocate for any changes.

Overall, the commenters supported the changes made by the interim rule. This final rule responds to the comments received by the public comment deadline and makes minor clarifying and related changes.

Administration

Timing

Comment: NRCS received comment that urged the agency to continue to provide timely announcement of funding opportunities and consistently make payments on time.

Response: NRCS remains committed to providing timely information and payment for involvement in all our programs, including CSP. Timeliness of information and payments are integral to maintaining public trust and NRCS will continue to emphasize this importance in CSP implementation. No

changes in the final rule are necessary to address this concern.

Training

Comment: NRCS received comment that encouraged NRCS to continue to provide appropriate training to NRCS field staff. This was in response to a change to § 1470.8(c). The interim rule removed the text that specifies that in providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

Response: As explained in the interim rule, NRCS modified paragraph (c) to remove text related to training NRCS staff as this is an internal agency administrative matter. NRCS will continue to provide training to field staff for all aspects of work performed. No changes were made in this final rule in response to this comment.

Streamlining and Flexibility

Comment: NRCS received comment urging NRCS to further streamline the processes for participation in CSP. Specifically, comment cited an abundance of paperwork and regulations that were cumbersome and difficult for participants to understand or navigate. The comment also sought an increased level of flexibility in how NRCS approaches CSP implementation.

Response: NRCS understands that navigating Federal programs can at times be difficult and complex. NRCS is streamlining application and contract processes, which will reduce the number and intensity of participant tasks required for CSP participation. While the interim rule and this final rule make strides in this direction, the vast majority of recommendations regard changes to the internal administration of NRCS personnel.

Conservation Activities

Comment: NRCS received comment recommending changes to conservation activities. These comments included discussion of: Bundles, criteria, environmental benefits, renewals, and recommendations for particular enhancements.

Response: NRCS appreciates the level of commitment and interest of our stakeholders in the details of the conservation activities for CSP. While specific conservation activities are not the purview of the rule, NRCS shared these comments with the staff who develop the guidance and standards

related to conservation activities and will be taken into consideration as updates are made. NRCS maintains a National Handbook of Conservation Practices and Field Office Technical Guides, which provide the requirements for individual conservation practices. Requirements for other conservation activities, including enhancements and bundles, are provided in guide sheets available on the NRCS website. The process for managing conservation practice standards can be found in the NRCS General Manual, Title 450, Part 401, "Technical Guides."

Contract Renewals and Extensions

Incentives for Renewal

Comment: NRCS received comment about incentives and other items associated with contract renewal.

- Several comments recommended that NRCS make renewing a CSP contract more appealing and straightforward, such as by offering higher contract rates than in the initial contract.

- Others suggested that a participant could exhaust the available enhancements needed to qualify for renewal, recommended renewal offers be made in year four, and urged that NRCS simply renew existing contracts without requiring additional enhancements (additionality).

- Additional comments requested that more emphasis be placed on work completed in the initial CSP contract when determining payment rates for the renewal contract.

- Another comment recommended that applications for renewal contracts compete along with the applications for new contracts in the classic signup.

Response: Renewal payment rates are determined based on the payment factors identified in the regulation and are evaluated annually to determine whether adjustments are needed. NRCS will continue to evaluate costs associated with managing and maintaining existing activities and implementing new activities and work to adjust the rates accordingly.

Additionality is required by the law. NRCS will revisit the role that additionality plays for renewal contracts as it pertains to ranking and scheduling additional activities. The agency will address these issues in more detail in subsequent topics.

NRCS has flexibility in adjusting the specific ranking criteria for each ranking pool, including between new and renewal ranking pools. Greater equity occurs when both renewal applicants and new applicants compete with other like applications. This ensures

continued participation by the best stewards and offers opportunities for new producers to participate in CSP.

Ranking

Comment: NRCS received comment recommending that renewal be based mostly or completely on the environmental benefits of renewal contracts, especially those benefits obtained from implementation of existing activities.

Response: CSP renewals were automatic in the past if the participant met basic compliance and threshold requirements. The 2018 Farm Bill modified renewal criteria and required that renewals be based upon a competitive process using the same ranking factors as used for new CSP signups. Although the ranking criteria were simplified in the 2018 Farm Bill and in the interim rule, NRCS will continue to give more weight to additional conservation than existing conservation in the ranking for both renewal and new signup contracts. NRCS's goal is to increase conservation and we will adjust weighting to create the correct balance in CSP through internal guidance without any change to the final rule. NRCS will continue to monitor CSP and ensure that it remains competitive.

Single Renewal

Comment: NRCS received comment recommending that NRCS remove the "one-time only" text from the renewal options and allow participants to renew numerous times.

Response: The 2018 Farm Bill removed the specific one-time renewal text that had been in the 2014 Farm Bill; however, the expectation is that participants will fully incorporate adopted CSP activities as part of their standard operation management. These producers should see the value in their conservation activities over time and no longer require payments they receive through CSP as an incentive to maintain these activities. This was the concept supporting the interim rule's addition of the 2-year ineligibility period in § 1470.26(c). NRCS removed the "one-time" renewal text in this final rule, but also revised the provision related to the 2-year ineligibility period to include those who apply for renewal and are not selected. As comments point out, with each renewal, fewer and fewer enhancements remain available for an operation to qualify for renewal, and the competitive nature of the renewal process means that those enhancements that remain are likely not to have as much conservation benefit as existing activities on the operations seeking

renewals beyond the first renewal contact. If situations change after 2 years, the operation will be eligible to once again compete in the classic CSP signup.

Definitions

Comment: NRCS received comment related to definitions in the interim rule, including conservation activities, eligible land, enhancement, management intensive rotational grazing, and resource-conserving crop.

Response: The comments suggested minor, technical edits or gave general praise for specific definitions. The suggested minor edits are adopted.

Eligibility

Activities

Comment: NRCS received comment about the eligibility of certain activities. First, comment sought to make eligible annual payments for existing activities regardless of any enhancements or additional activities, looking at two basic scenarios:

(a) Where an operation or land use on an operation had exhausted the opportunities for additional activities, and they wanted CSP to serve as a reward for ongoing stewardship despite this lack of opportunity; or

(b) Where a producer has started an activity before the contract is executed.

Second, comment criticized the interim rule as not remaining size-neutral, claiming this unfairly excluded larger operations where, as the comment argues, there is a greater opportunity for conservation benefits.

Response: The CSP authorizing law mandates additional activities. By definition, a new conservation activity started before the contract is executed is not an "additional" activity under the contract.

CSP requires participants to enroll their entire operation. NRCS only considers the size of the operation when calculating the per-acre payment-rate component of the existing activity payment, which is exclusively based on the actual acres of each land use enrolled in the contract. The only size-relevant limitation on CSP contracts is the \$200,000 payment limit mandated by statute and incorporated in the CSP regulation and the associated regulatory contract limit that mirrors the payment limit for individuals and legal entities. In 2010, NRCS increased the contract limit to \$400,000 for joint operations, which may benefit certain larger operations (through the final rule published in the **Federal Register** on June 3, 2010, 75 FR 31610–31661, referred to below as the 2010 CSP final

rule). In addition, participants in CSP are also subject to a \$900,000 average Adjusted Gross Income limitation.

Land

Comment: NRCS received comment about land eligibility. Generally, these comments supported the changes made in the interim rule, especially the expansion of land eligibility to public land components of agricultural operations. Several comments recommended that NRCS do more to ensure that participants understand the provisions of their CSP contracts. Comments also addressed heirs' property, employee training, and other areas of interest that commenters would like NRCS to make eligible.

Response: The types of publicly held land mentioned in comments all fall within the scope of public lands identified in the interim rule. Heirs' property issues fall within the scope of "other instances in which NRCS determines under § 1466.6(b)(3) that there is sufficient assurance of control" when NRCS is making determinations of eligibility and no change was needed to address this concern. NRCS employee training and ensuring that participants understand their CSP contracts are necessary for NRCS to provide the highest-quality customer service; they are a priority for NRCS.

Producer

Comment: NRCS received comment about producer eligibility requirements and how such may be affected by cash rent situations and tenant-landlord situations where:

- (a) The lease may terminate within the prospective contract period;
- (b) Control of land is ambiguous between tenant and landlord; and
- (c) The interests of tenant and landlord may be incongruous.

Response: CCC regulations in 7 CFR part 1400 addresses cash-rent landlords and applies to CSP. This final rule reiterates that the producer must demonstrate control of the land and meet all applicant eligibility requirements for the producer to participate in CSP.

Funding

Comment: NRCS received comment about how fund allocations are addressed in the regulation, including both support for and against the changes made. Some commenters recommended exchanging dollars for acres allocated to each State (that is, a proportional allocation of dollars based on the ratio of each State's agricultural land, weighted by land use type, relative to national totals). Other comment raised

that different challenges and conservation opportunities for Western landowners should be considered in fund allocations to achieve more equitable geographic distribution of CSP funds. Some comment suggested using especially sensitive areas, such as critical conservation areas (CCAs), to prioritize allocations. Comment also recommended increasing set asides for historically underserved producers.

Response: NRCS appreciates the suggestions made, but the text in the regulation about fund allocations mirrors the text in the law, and therefore no changes have been made in response to most of this comment. However, to provide clarity, NRCS adjusted text related to the set-aside for historically underserved producers in § 1470.4(c).

Grassland Conservation Initiative

Comment: NRCS received comment that recommended either prohibiting crops on land covered by a Grassland Conservation Initiative (GCI) contract or limiting the types of crops and other planted species by type and area on land enrolled in GCI.

Response: This concern is addressed by the conservation stewardship threshold requirement in the interim rule. Any crops planted on land covered by a GCI contract must implement conservation activities that achieve conservation stewardship levels analogous to the land being planted or maintained in grass. This requirement will be fleshed out on a State-by-State basis using the methods defined in the regulation for stewardship thresholds, including analytics tools or models and other methods that measure conservation and improvement in priority resource concerns.

Local and Regional Priorities

Comment: NRCS received comment requesting that NRCS address prioritization of conservation practices and activities according to local and regional needs, including seeking additional State-level flexibility and responsiveness to local resource concerns. Other comment requested that NRCS incorporate language that require consideration of local priority resource concerns when evaluating applications and to identify the prioritization process for States to select priority resource concerns. Comment also recommended that NRCS reference locally-led conservation in the rule, similar to what is in the EQIP rule.

Response: NRCS has modified § 1470.2(d) to more closely align with EQIP text, which addresses comments focused on flexibility and responsiveness to local and regional

needs. NRCS involvement of State technical committees, Tribal Conservation Advisory Councils, and local working groups is identified in 7 CFR part 610, subpart C and in the NRCS standard operating procedures, which were published in the **Federal Register** on April 7, 2009 (74 FR 15673–15677). NRCS is not including these aspects in the CSP regulation.

Organic and Transitioning to Organic

Comment: NRCS received comment recommending modifications that assist organic producers or those transitioning to organic production, such as restoration of the full complement of organic-specific enhancements (citing the "2017 reinvention of CSP"), weighting allocations more in the direction of farm numbers (as organic farms are smaller on average), using outside data to determine the number of operations transitioning to organic, and establishment of a separate ranking pool in each State for organic and transitioning to organic applicants.

Response: Most CSP enhancement activities can be used on transitioning and certified organic operations. NRCS provides an organic crosswalk on its website, allowing transitioning and certified organic producers to see how various conservation activities can fit their operations. Though specific practices, activities, and enhancements are outside the scope of this rule, NRCS shared the comments with those who develop conservation standards and guidance to consider whether adjustments should be made. Similarly, with respect to weighting of allocations, § 1470.4(b) states that NRCS will allocate funding based on both the number of operations and the number of acres. NRCS will continue to seek an equitable balance between these two criteria. Nothing in the rule prohibits the use of outside data to determine the status of an operation as transitioning to organic. NRCS addresses establishment of ranking pools, including those needed to support organic and transitioning to organic production, with the input of the State Technical Committee.

Outreach

Comment: NRCS received comment recommending additional outreach efforts, such as targeting forested lands, cover crop activities, and public lands.

Response: NRCS appreciates this feedback and will continue to evaluate which aspects of CSP are underutilized to maximize the impact of outreach efforts.

Payments and Contract Limits

Comment: NRCS received comment related to the higher contract limitation for joint operations. Most comment recommended keeping the contract limit at \$200,000 regardless of the participant type suggesting that allowing the higher contract limit for joint operations reduces the availability of funds for individuals and small farms. Other comment suggested the contract limitation itself is a violation of the law and large operations provide more conservation benefits.

Response: By law, CSP has an aggregate \$200,000 payment limitation for persons and legal entities, directly or indirectly, for all contracts entered into during FYs 2019 through 2023. Under payment limitation requirements that are applicable to NRCS and Farm Service Agency programs, joint operations are able to receive a payment up to the maximum payment amount specified for a person or legal entity multiplied by the number of persons or legal entities that comprise ownership of that joint operation (see 7 CFR part 1400). Without a contract limit, joint operations could receive very large payments under a CSP contract.

To address concerns related to large contracts with joint operations, NRCS decided in 2009 to impose a regulatory contract limit that corresponded with the CSP payment limitation. For the 2009 interim rule, the contract limit did not adjust for joint operations, but in response to public comment, the 2010 final rule doubled the contract limit for joint operations to \$400,000. This system was maintained in the CSP regulation through the 2014 Farm Bill, was continued in the 2019 interim rule, and is maintained in this final rule.

The overall CSP payment limitation may not be waived. No member of a joint operation may receive more than \$200,000 in payment through CSP for FYs 2019 through 2023. But, when a joint operation of two or more members enters into a CSP contract, the CSP contract with the joint operation may receive funding of up to \$400,000. Note that large operations do not necessarily have the best stewardship and will not necessarily or automatically receive a higher payment. Payment is based on the manner in which the operation is managed.

Payments

Comprehensive Conservation Plan Payment

Comment: NRCS received comment supporting the inclusion of the one-time payment for development of a comprehensive conservation plan,

including consideration of source water protection and the use of this option for development of forest management plans.

Response: NRCS appreciates acknowledgement of the 2018 Farm Bill's inclusion of the one-time payment for development of a comprehensive conservation plan.

Early Start Waiver

Comment: NRCS received comment about early start waivers. Comment expressed concern that this provision could prevent producers from earning payments for existing activities and recommended NRCS be required to grant waivers when administrative actions delay contract obligation and implementation of conservation activities until the following crop year.

Response: In the interim rule, NRCS added text in § 1470.24(f)(4) to allow an "early start waiver" for CSP, which provides alignment with EQIP. Additionally, NRCS adjusted the final rule text in § 1470.24(f)(4) to reflect that the provision applies only to new conservation activities. NRCS awards early start waivers on a case-by-case basis and does not believe that adding text requiring waivers in specific situations is needed.

Land Use Requirements

Comment: NRCS received comment recommending changes to requirements for payments tied to land use, including:

(1) A change to § 1470.24(a)(3) regarding the requirement that a participant implement at least one additional conservation activity on one land use within the first 12 months of the contract; and

(2) A change to § 1470.24(a)(2) requesting removal of the requirement that in order to receive an annual payment for a land use, the participant must adopt at least one additional conservation activity on that land use.

Response: With respect to the requirement that a participant implement at least one additional conservation activity on one land use type, NRCS has adjusted the text in § 1470.24(a)(3) to remove the phrase "on one land use."

To address the comment focused on annual payment eligibility, the CSP statute requires adoption of new conservation activities and management and maintenance of existing activities. Past policy set the requirement that the applicant had to schedule an additional activity on each land use within the operation in order to receive payments. NRCS will address this concern in a manner that conforms to the existing regulatory text.

Minimum Payment

Comment: NRCS received comment related to minimum payments recommending that the rule require that NRCS provide a minimum payment and that the minimum payment increase from \$1,500 to at least \$2,000.

Response: Although NRCS has provided a minimum contract payment in the past, there may be reasons in the future where a minimum contract payment may not be warranted. As such, NRCS is retaining "may" in the final rule. The actual rate for minimum contract payments is not set in regulation but determined based upon estimated costs incurred by a participant for participation in the planning process that are not otherwise compensated under CSP. The NRCS Chief retains the discretion to adjust as appropriate to reflect costs incurred by a participant for which the participant is not otherwise compensated.

Payment Factors

Comment: NRCS received comment that encouraged NRCS to use as the primary means for determining payment levels the degree to which the conservation activities are integrated across the entire agricultural operation for all State-identified priority resource concerns over the term of the contract.

Response: CSP statutory provisions require NRCS to make payments based, to the maximum extent practicable, on the following seven factors:

(1) Cost incurred by the producer associated with planning, design, materials, installation, labor, management, maintenance, or training;

(2) Income forgone by the producer;

(3) Expected conservation benefits;

(4) The extent to which priority resource concerns will be addressed through the installation and adoption of conservation activities on the agricultural operation;

(5) The level of stewardship in place at the time of application and maintained over the term of the contract;

(6) The degree to which the conservation activities will be integrated across the entire agricultural operation for all applicable priority resource concerns over the term of the contract; and

(7) Such other factors as determined appropriate by the Secretary.

NRCS incorporates all statutory payment factors into the regulatory text, which are used to develop payment rates for both the existing activity payment and the additional activity payment. NRCS determines how to weight the various payment factors with

input from State technical committees as appropriate.

Payment Rates

Comment: NRCS received comment related to payment rates recommending that NRCS evaluate the balance between payment for existing conservation activities versus payment for new conservation activities.

Response: CSP participants are eligible to receive annual payments for maintaining existing conservation levels and implementing additional conservation activities.

Since the CSP reinvention in 2017, annual payments for maintaining existing stewardship levels on the operation have been comprised of \$300 to \$350 per resource concern met at the time of application and a per-acre payment rate based on land use. Per-acre payment rates are based on estimated costs of existing conservation practices per acre on each land use. Cropland generally has received the highest payment rate, with range and forestland at the lower end, and pasture in the middle. As NRCS develops its digital tools, the agency will evaluate how to make payments more reflective of on-the-ground benefits using information available through the Conservation Assessment and Ranking Tool (CART). Based on the agency's goal to gain increased conservation benefits through CSP, NRCS will continue to give more weight to additional conservation over existing conservation in both ranking and payment.

Payment Schedules

Comment: NRCS received comment recommending that State Conservationists seek input from State technical committees in the development of the payment schedules; also, comment sought standardization of payment schedules between CSP and EQIP and increased public availability of those payment schedules.

Response: Payment schedules are, and have been, consistent between CSP and EQIP. Payment schedules are posted on NRCS State websites and input from State technical committees is sought in the development of those schedules.

Stewardship Threshold

Comment: NRCS received comment expressing concern about the requirement to adopt new conservation activities when a producer has already met the stewardship threshold.

Response: As specified in the law, NRCS must continue to require that producers both maintain their existing activities and adopt additional activities.

Supplemental Payments

Comment: NRCS received comment commending the interim rule's inclusion of supplemental payments for advanced grazing management and resource-conserving crop rotations; comment also offered a specific means of calculating the supplemental payment.

Response: NRCS appreciates the positive feedback. The comment recommending calculation of the supplemental payment may be considered in the development of the payment schedules.

Ranking

Criteria

Comment: NRCS received comment related to ranking criteria including that existing activities receive either equal or greater priority in ranking applications and emphasizing that environmental benefits should be the sole basis for the evaluation regardless of whether they result from existing or new activities. In addition, comment requested specific emphasis for certain resource concerns or target areas, such as forestry, water management, grazing management, cover crops, highly erodible land management, natural or ancient heritage sites, and participation in sustainability programs. The remaining comments requested NRCS:

- (a) Align CSP more with EQIP regarding input from State technical committees and local work groups;
- (b) Provide additional assistance to landowners with environmentally sensitive lands;
- (c) Allow for the continued use of basic cover crops in CSP; and
- (d) Broaden and simplify ranking criteria.

Response: The text in § 1470.20(c) in the interim rule mirrors text in the 2018 Farm Bill. The changes made there broaden the scope of NRCS discretion in ranking applications and building out the ranking factors within the final rule limits the discretion provided by the 2018 Farm Bill. Regarding § 1470.20(c)(iii), NRCS will use its discretion to maximize its ability to achieve CSP goals and objectives, including ensuring that producers enroll in CSP through a thoroughly competitive process. The goal is for CSP contracts to be awarded to applicants who propose activities with the greatest conservation benefits.

Ranking Pools

Comment: NRCS received comment related to ranking pools, including recommending that the advice of the State technical committee in

determining the appropriate ranking pools for the State, with a concern that focus on geographic areas, watersheds, or other high priority areas would detract from other priority resource concerns that were State-wide. Other comments request that NRCS include more specific language requiring the establishment of separate ranking pools for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, and organic and transitioning-to-organic producers.

Response: NRCS has historically provided policy guidance that requires States to establish separate fund pools for beginning farmers and ranchers and socially disadvantaged farmers and ranchers. Changes to the suite of NRCS business tools have allowed States new flexibility in managing applications from these historically underserved groups. As a result, NRCS is not incorporating requirements specifying these ranking pools in the final rule. NRCS will, however, continue to ensure that historically underserved groups continue to have access to CSP.

Timing

Comment: NRCS received comment on the timing of the ranking process, both supporting and recommending removal of the discretionary phrase "to the extent practicable" in § 1470.2(c)(1). Other comments recommend expansion of the timing of the first ranking period.

Response: NRCS appreciates the comments received on the timing of ranking periods. NRCS is retaining the discretionary text in the interim rule, which addresses unforeseen circumstances that may delay the agency's ability to hold a ranking period within the timeframe provided.

Soil Health

Comment: NRCS received comment expressing that the interim rule failed to identify how NRCS will address soil health as a priority?

Response: This comment refers to the new requirement that the Secretary "[t]o the maximum extent feasible . . . manage [CSP] to enhance soil health." To address this concern, NRCS has added a paragraph to § 1470.2 that identifies how NRCS will address soil health as a priority.

Source Water Protection

Comment: NRCS received comment recommending that NRCS should specifically address source water and drinking water protection in the final rule. While acknowledging the interim rule addressed water quality and quantity, comment urged NRCS to distinguish such resource concerns from

source water protection, and to prioritize source water protection in the National Water Quality Initiative (NWQI) watersheds or other high priority sites.

Response: NRCS will continue to implement CSP to address source water protection. The 2018 Farm Bill contained specific text regarding source water protection in the EQIP provisions and, as CSP moves toward greater alignment with EQIP, NRCS will consider adding source water protection criteria to existing and new conservation activity guide sheets. Further, within the interim rule's provisions, States retain the authority to target CSP funds toward source water protection through the establishment of ranking pools, including prioritization of conservation activities within the ranking templates.

Technology

Comment: NRCS received comment recommending greater producer accessibility to online tools, including access for rural communities without consistent online access. Other comment sought a way to calculate potential economic incentives for enrollment in CSP and another requested increased producer access to sustainability data in CART.

Response: Digital tools and processes are outside the scope of the final rule. However, NRCS remains committed to providing excellent customer service, which includes providing a user-friendly interface with our public-facing digital tools. Future changes will likely take place on *Farmers.gov* or through other digital media.

Miscellaneous Correction

In addition to the changes discussed above, this rule is making two corrections, both correct cross references to other regulations. There is a typo in the cross reference to a paragraph in another section of the regulation. One correction simply revises the cross reference to point to the accurate paragraph where the original contract limit is outlined. The other correction updates the cross reference to the USDA debt management rules in 7 CFR part 3. In the USDA rule published on June 17, 2020, (85 FR 36670–36714) USDA revised part 3 to eliminate the debt collection regulations of the following USDA agencies: The Commodity Credit Corporation (CCC); the Federal Crop Insurance Corporation (FCIC), and the Farm Service Agency (FSA). This rule updates the cross-reference in the CSP regulation, which previously pointed to the former CCC debt management regulations.

Notice and Comment, Paperwork Reduction Act, and Effective Date

In general, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves matters relating to benefits and therefore is exempt from the APA requirements. Further, the regulations to implement the programs of chapter 58 of title 16 of the U.S. Code, as specified in 16 U.S.C. 3846, and the administration of those programs, are—

- To be made as an interim rule effective on publication, with an opportunity for notice and comment,
- Exempt from the Paperwork Reduction Act (44 U.S.C. ch. 35), and
- To use the authority under 5 U.S.C. 808 related to Congressional review.

Consistent with the use of the authority under 5 U.S.C. 808 related to Congressional review for the immediate effective date of the interim rule, this rule is also effective on the date of publication in the **Federal Register**.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a Federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this final rule as economically significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs,

benefits, and transfers of this rule are summarized in the section below in this rule. The full regulatory impact analysis is available on <https://www.regulations.gov/>.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, to manage the private costs required to comply with Federal regulations, for every new significant or economically significant regulation issued, the new costs must be offset by savings from deregulatory actions. This rule involves transfer payments and does not rise to the level required to comply with Executive Order 13771.

In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. NRCS reviews regulations and makes changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Cost Benefit Analysis Summary

Compared to CSP as authorized under the 2014 Farm Bill, Congress significantly reduced CSP's size in the 2018 Farm Bill—from \$9 billion to \$3.975 billion over 5 years—but left much of CSP's underlying structure intact. With fewer dollars available, fewer contracts will be funded under the 2018 Farm Bill. However, CSP will continue to fund high-ranking applications across all States, with the aim of improving cost effectiveness based on dollars per additional unit of conservation effect.

The 2018 Farm Bill eliminated the 10-million-acre cap on enrollment and the annual \$18 per acre cap on CSP costs, moving to an annual funding level for new contracts, similar to EQIP. NRCS will now obligate funds for all activities conducted under a new or renewed CSP contract up front. NRCS will also allocate a portion of the annually available funds for contract renewals.

Regarding changes beyond funding and the elimination of the acreage cap, only the revised contract renewal conditions are expected to generate impacts that are moderately different from the 2014 Farm Bill. CSP contracts continue to run for 5 years and include the potential for participants to compete for a renewal contract for an additional 5 years. Under the 2014 Farm Bill, renewals were non-competitive and as long as the participant met eligibility and CSP requirements, NRCS would

approve a renewal contract for one additional 5-year period. Under the 2018 Farm Bill, NRCS ranks contract renewals against other contract renewals and funds the highest ranked renewal applications. NRCS provides funding for renewals using approximately 40 percent of the total funds allocated for CSP in a given fiscal year, not including the funds set aside for the CSP Grassland Conservation Initiative. NRCS uses the remaining 60 percent of the allocation to fund the highest ranked new applications. The overall decrease in program funding will reduce the funding available for both renewal and new contracts, reducing the total number of acres treated and the amount of conservation achieved through CSP. Cost-effectiveness of overall CSP may increase as lower ranked applications will not be funded.

The 2018 Farm Bill also mandates the establishment of the CSP Grassland Conservation Initiative for eligible producers with base acres where the entire farm was planted to grass or pasture, or was idle or fallow, from January 1, 2009 to December 31, 2017. Beginning in FY 2019, the Secretary started providing signups for producers' to make a one-time election to enroll eligible land in the initiative. NRCS will continue to provide signups until all eligible producers are enrolled or the authority for CSP expires, which is currently in FY 2023. Enrollment is for a 5-year non-renewable term. Participants must meet CSP eligibility conditions, but do not go through the ranking process.

Participating producers must agree to meet or exceed the stewardship threshold for not less than one priority resource concern by the date on which the contract expires. The annual payment is limited to \$18 per acre, and enrolled acreage cannot exceed the number of base acres on a farm.

An estimated 2.4 million acres meet the 2009 through 2017 criterion noted above and are eligible for the Grassland Conservation Initiative. Although these eligible acres are concentrated in Texas, Oklahoma and Kansas, there are eligible acreages throughout most of the country. The Grassland Conservation Initiative is expected to cost \$214.9 million over 5 years, representing 5.5-percent of total authorized CSP funding under the 2018 Farm Bill. Through March 2020, a total of 1.2 million acres had been enrolled with obligated funds totaling \$106.8 million. Cost-effectiveness may be affected marginally as fewer funds will be available.

The 2018 Farm Bill established a \$200,000 CSP payment limit per person or legal entity which carried over into

the 2014 and 2018 Farm Bills. To address concerns related to potentially large contracts with joint operations, NRCS initially set a contract limit of \$200,000 for all contracts but increased the contract limit to \$400,000 for joint operations in the 2010 CSP final rule. NRCS indicated in the interim rule that the higher contract limit for joint operations would continue for the duration of the 2018 Farm Bill (2019 through 2023). In response, NRCS received comments on contract limits, most of which recommended keeping the contract limit at \$200,000 regardless of the participant type. To evaluate these comments, NRCS considered the impact of eliminating higher contract limit on potential CSP participants and the demand for CSP funds. Analysis of data found that reducing the contract limit to \$200,000 for all contracts would increase funding available for additional contracts on average by \$43.7 million per signup. The maximum increase in acres that could be treated with this additional funding—about 658,000 acres—represents 9.1 percent of the 7.2 million acres enrolled on average per signup since 2014. Reduced participation by joint operations and other factors, however, could lead to substantially fewer additional acres being treated than expected. Joint operations enrolled in CSP with contract costs exceeding the \$200,000 limit are on average three times as large, in terms of acres, as operations enrolled in CSP with contract costs below the contract limit. However, the average per acre costs of the joint operations with contract costs exceeding the contract limit are only 1.34 times larger than the average per acre costs of operations enrolled in CSP that have contract costs below the contract limit. Based on these findings, NRCS is making no change to the existing \$400,000 contract limit.

Conservation activities funded through CSP contribute to improvements in soil health and reductions in water and wind erosion on cropland, pasture, forest and rangeland; reduce nutrient losses to streams, rivers, lakes and estuaries; increase wildlife habitat, including providing habitat for pollinators; and provide other environmental benefits. Environmental benefits resulting from CSP's conservation activities are difficult to quantify at this time. Partial estimates made by NRCS (see Benefits section in the full analysis) indicate the positive benefits of CSP.

As explained above, beginning in FY 2020, NRCS began using a new software tool, CART, to assess and rank all program applications. Per the statutory requirements outlined in section

2308C(1) of the 2018 Farm Bill, CART allows NRCS to rank CSP applications based on (1) the natural resource conservation and environmental benefits that result from the conservation treatment on all applicable priority resource concerns at the time of submission of the application; (2) the degree to which the proposed conservation activities increase natural resource conservation and environmental benefits; and (3) other consistent criteria, as determined by the Secretary. Additionally, CART creates the framework to better facilitate, and integrate, the potential costs with environmental benefits (outcomes). Through data collected in CART, NRCS will be better prepared to conduct future analysis of the environmental benefits achieved through CSP.

NRCS estimates that the total cost (Table 1) of accessing the program over 5 years is \$2.5 billion with total transfers over 5-years equaling \$3.795 billion. Given a 3 percent discount rate, this translates into a projected annualized cost to producers of accessing CSP of \$414.4 thousand in constant 2019 dollars and projected annualized transfers (NRCS funds) of \$759 million in constant 2019 dollars.

TABLE 1—COSTS, BENEFITS AND TRANSFERS (BASED ON 3 PERCENT DISCOUNT RATE), 2019–2023

Category	Annual estimate (2019 \$)
Costs ^a	\$414,400.
Benefits	Qualitative.
Transfers	\$759,000,000.

^a Costs consist of imputed cost of applicant and participant time to gain access to CSP.

In implementing the 2018 Farm Bill, USDA is following legislative intent to maximize conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal, State, and Tribal environmental requirements. Participation in CSP is voluntary. Hence, CSP participation is not expected to negatively impact CSP participants and nonparticipants.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to the substantive comments NRCS received on the interim rule, NRCS invited public comments on how to make the rule easier to understand.

NRCS has incorporated these recommendations for improvement where appropriate. NRCS responses to public comment are described in more detail above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). NRCS conducted an analysis of the CSP interim rule and the analysis has determined there will not be a significant impact to the human environment and as a result, an environmental impact statement (EIS) is not required to be prepared (40 CFR 1508.13). While OMB has designated this rule as “economically significant” under Executive Order 12866, “. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. The Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were available for review and comment for 30 days from the date of publication of the interim rule in the **Federal Register**. NRCS has considered this input and determined that supplementing or revising the current available draft of the CSP EA was warranted. NRCS has made the following changes:

3.1—Added info on comments received on interim rule and EA and addressed comment on EA.

4.4—Updated description of “Affected Environment” when new data

were available, including using 2017 Census of Agriculture data.

Appendix C—Updated with 2019 CSP enhancement examples.

Figure 7 (Socially Disadvantaged Farmers and Ranchers)—Updated map using the most recent census data.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule-related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative

comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA’s Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does not have significant tribal implication that require further tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, NRCS and CCC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2018 Farm Bill. Tribal consultation for this rule was included in the 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National museum of the American Indian, in Washington, DC. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title I session. There were no specific comments from Tribes on CSP during this Tribal consultation.

Additionally, NRCS held sessions with Indian Tribes and Tribal entities across the country in the spring of FY 2019 to describe the 2018 Farm Bill changes to NRCS conservation programs, obtain input about how to improve Tribal and Tribal member access to NRCS conservation assistance, and make any appropriate adjustments to the regulations that will foster such improved access. NRCS invited State leaders for the Farm Service Agency (FSA) and Rural Development (RD), as well as Regional Directors for the Risk Management Agency (RMA) to discuss their programs also.

As a result, approximately 50 percent of the comments received as a result of these sessions were directed to FSA, RMA, RD, and other USDA agencies, with many comments specific to hemp production and the surrounding regulations. Over 40 percent of the feedback pertained to NRCS programs. A handful of those comments were specific to CSP. Feedback included general requests for alternative funding arrangement opportunities under CSP, consideration of economic hardship of Tribes regarding financial assistance rates, and a more extensive list of culturally-significant plants for the subject state or region. Other comments included interest in establishing a separate funding pool for Tribes and an

explanation of why CSP went from an acre-based program to a dollar-based program. Comments also listed challenges specific to Tribes that impact eligibility and inhibit access to USDA programs. None of the feedback received necessitated a change to the regulation.

NRCS will continue to work with our Tribal stakeholders to address the issues raised in order to facilitate greater technical assistance and program delivery to Indian country.

Separate from Tribal consultation and the sessions discussed above, communication and outreach efforts are in place to assure that all producers, including Tribes (or their members), are provided information about the regulation changes. Specifically, NRCS obtains input through Tribal Conservation Advisory Councils. A Tribal Conservation Advisory Council may be an existing Tribal committee or department and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, programs, and impacts on Tribes. Tribal Conservation Advisory Councils provide a venue for agency leaders to gather input on Tribal interests.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), requires federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost-benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rule applies is 10.924—Conservation Stewardship Program.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1470

Agricultural operation, Conservation activities, Natural resources, Priority resource concern, Stewardship threshold, Resource-conserving crop rotation, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife and forest management.

Accordingly, the interim rule published November 12, 2019, at 84 FR 60883, is adopted as final with the following changes:

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

- 1. The authority citation for part 1470 continues to read as follows:

Authority: 16 U.S.C. 3839aa–21–3839aa–25.

- 2. In § 1470.2, add paragraph (c)(3) and revise paragraph (d) introductory text to read as follows:

§ 1470.2 Administration.

* * * * *

(c) * * *

(3) To the maximum extent feasible, manage CSP to enhance soil health.

(d) To support locally led conservation, NRCS will solicit input from State technical committees, Tribal Conservation Advisory Councils, and local working groups to develop State-level technical, outreach, and program materials, including:

* * * * *

- 3. In § 1470.3, revise the definitions for “enhancement,” “management-intensive rotational grazing,” and “resource-conserving crop” to read as follows:

§ 1470.3 Definitions.

* * * * *

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance that allows a producer to address levels of conservation beyond what the minimum conservation practice standard requires. Enhancements, alone or in combination with other enhancements and practices, result in conservation systems that are equal to or greater than the performance level for the planning criteria identified

for a given resource concern. Planning criteria are defined for each resource concern in Section III—Conservation Management Systems, Field Office Technical Guide.

* * * * *

Management-intensive rotational grazing means a strategic, adaptively managed multipasture grazing system in which animals are regularly and systematically moved to a fresh pasture in a manner that, as determined by NRCS:

- (1) Maximizes the quantity and quality of forage growth;
- (2) Improves manure distribution and nutrient cycling;
- (3) Increases carbon sequestration;
- (4) Improves the quality and quantity of cover for wildlife;
- (5) Provides permanent cover to protect the soil from erosion; and
- (6) Improves water quality.

* * * * *

Resource-conserving crop means a crop that is one of the following, as determined by NRCS:

- (1) A perennial grass;
- (2) A legume grown for use as a cover crop, forage, seed for planting, or green manure;
- (3) A legume-grass or diverse grass-forb mixture comprised of species selected for climate, rainfall, soil, and other region-specific conditions; or
- (4) A small grain or other resource-demanding crop grown in combination with a grass, legume, other forbs, or grass-forb mixture, whether interseeded, relay-planted into the resource-demanding crop, or planted in rotation.

* * * * *

- 4. In § 1470.4, revise paragraph (c) introductory text to read as follows:

§ 1470.4 Allocation and management.

* * * * *

(c) Of the funds made available for each of fiscal years 2019 through 2023 to carry out CSP, NRCS will, to the maximum extent practicable, use at least:

* * * * *

- 5. In § 1470.24, revise paragraphs (a)(3) and (f)(4) to read as follows:

§ 1470.24 Payments.

(a) * * *

(3) At least one additional conservation activity must be implemented within the first 12 months of the contract. NRCS may extend this timeframe if NRCS determines that the participant is unable to complete the conservation activity for reasons beyond their control;

* * * * *

(f) * * *

(4) New conservation activities initiated or implemented prior to contract approval, unless NRCS granted a waiver prior to the participant starting the activity.

* * * * *

§ 1470.25 [Amended]

■ 6. In § 1470.25, amend paragraph (c) by removing the cross reference “§ 1470.24(g)” and adding “§ 1470.24(h)” in its place.

■ 7. In § 1470.26, revise paragraphs (a) and (c) to read as follows:

§ 1470.26 Contract renewal.

(a) During the first half of the fifth year of the initial contract period, NRCS may allow a participant to apply and compete for the opportunity under § 1470.20 to renew the contract to receive payments for an additional 5-year period, subject to the availability of funds, if the participant meets criteria from paragraph (b) of this section.

* * * * *

(c) NRCS will determine a participant ineligible for a new CSP contract on an agricultural operation for 2 years following expiration of their prior contract if the participant does not enter a renewal contract on the agricultural operation at the end of the prior contract period.

§ 1470.35 [Amended]

■ 8. In § 1470.35, amend paragraph (a) by removing the words “7 CFR part 1403” and adding the words “part 3 of this title” in their place.

Kevin Norton,

Acting Chief, Natural Resources Conservation Service.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2020–22345 Filed 10–8–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2020–0017]

RIN 1557–AE89

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1711]

RIN 7100–AF85

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF47

Regulatory Capital Rule: Temporary Changes to and Transition for the Community Bank Leverage Ratio Framework

AGENCY: The Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are adopting as final the revisions to the community bank leverage ratio framework made under two interim final rules issued in the **Federal Register** on April 23, 2020. The final rule adopts these interim final rules with no changes. Under the final rule, the community bank leverage ratio will remain 8 percent through calendar year 2020, will be 8.5 percent through calendar year 2021, and will be 9 percent thereafter. The final rule also maintains a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percentage point below the applicable community bank leverage ratio requirement.

DATES: The final rule is effective November 9, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Benjamin Pegg, Risk Expert, or Jung Sup Kim, Risk Specialist, Capital and Regulatory Policy, (202) 649–6370; Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, Chief Counsel’s Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office

of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 872–7526; Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862; or Brendan Rowan, Senior Financial Institution Policy Analyst I, (202) 475–6685, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–2877; Andrew Hartlage, Counsel, (202) 452–6483; or Jonah Kind, Senior Attorney, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for the Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, bbean@fdic.gov; Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Noah Cuttler, Senior Policy Analyst, ncuttler@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Catherine Wood, Counsel, cawood@fdic.gov; Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Background on the Community Bank Leverage Ratio Framework

The community bank leverage ratio framework provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria. The community bank leverage ratio framework implements section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires the Office of the Comptroller of the Currency (OCC), the Board of

Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) to establish a community bank leverage ratio of not less than 8 percent and not more than 10 percent for a qualifying community banking organization.¹ Under section 201(c) of EGRRCPA, a qualifying community banking organization whose leverage ratio exceeds the community bank leverage ratio, as established by the agencies, shall be considered to have met the generally applicable risk-based and leverage capital requirements in the capital rule (generally applicable rule), any other applicable capital or leverage requirements, and, if applicable, the “well capitalized” capital ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. Section 201(b) of EGRRCPA also requires the agencies to establish procedures for the treatment of a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

In November 2019, the agencies issued a final rule establishing the community bank leverage ratio framework, which became effective January 1, 2020 (2019 final rule).² Under the 2019 final rule, the agencies established a community bank leverage ratio of 9 percent using the existing leverage ratio calculation. A qualifying community banking organization that maintained a leverage ratio of greater than 9 percent and elected to use the community bank leverage ratio framework would have been considered to have satisfied the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the capital ratio requirements to be considered well capitalized.³

¹ Public Law 115–174, 132 Stat. 1296, 1306–07 (2018) (codified at 12 U.S.C. 5371 note). The authorizing statutes use the term “qualifying community bank,” whereas the regulation implementing the statutes uses the term “qualifying community banking organization.” The terms generally have the same meaning. Section 201(a)(3) of EGRRCPA provides that a qualifying community bank is a depository institution or depository institution holding company with total consolidated assets of less than \$10 billion that satisfies such other factors, based on the banking organization’s risk profile, that the agencies determine are appropriate. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and any such factors that the agencies determine appropriate.

² 84 FR 61776 (November 13, 2019).

³ Under existing prompt corrective action requirements applicable to insured depository institutions, to be considered “well capitalized” a banking organization must demonstrate that it is not

Under the 2019 final rule, a qualifying community banking organization is any depository institution or depository institution holding company that has less than \$10 billion in total consolidated assets, off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and trading assets and liabilities of 5 percent or less of total consolidated assets. The banking organization also cannot be an advanced approaches banking organization.⁴

In addition, the 2019 final rule established a two-quarter grace period during which a qualifying community banking organization that temporarily failed to meet any of the qualifying criteria, including the leverage ratio requirement, generally would still have been considered well capitalized so long as the banking organization maintained a leverage ratio of greater than 8 percent during that grace period. A banking organization that either failed to meet all the qualifying criteria within the grace period or failed to maintain a leverage ratio of greater than 8 percent would have been required to comply with the generally applicable rule and file the appropriate regulatory reports.

II. Interim Final Rules

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law.⁵ Section 4012 of the CARES Act directs the agencies to issue an interim final rule providing that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent, and a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. Section 4012 of the CARES Act specifies that the interim final rule is effective

subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. See 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements continue to apply under the community bank leverage ratio framework.

⁴ A banking organization is an advanced approaches banking organization if it is a global systemically important bank holding company, is a Category II banking organization, has elected to be an advanced approaches banking organization, is a subsidiary of a company that is an advanced approaches banking organization, or has a subsidiary depository institution that is an advanced approaches banking organization. See 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

⁵ Public Law 116–136, 134 Stat. 281.

during the period beginning on the date on which the agencies issue the interim final rule and ending on the sooner of the termination date of the national emergency concerning the coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act, or December 31, 2020 (termination date).

Accordingly, the agencies issued an interim final rule that implements a temporary 8-percent community bank leverage ratio requirement, as mandated under section 4012 of the CARES Act (statutory interim final rule).⁶ In addition, under the statutory interim final rule, a community banking organization that temporarily fails to meet any of the qualifying criteria, including the 8-percent community bank leverage ratio requirement, generally will still be considered well capitalized provided that the banking organization maintains a leverage ratio equal to 7 percent or greater. A banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

Since the statutory interim final rule could cease to be effective at any time before December 31, 2020, the agencies issued a separate interim final rule pursuant to section 201(b) of EGRRCPA that provides a graduated transition from the temporary 8-percent community bank leverage ratio requirement to the 9-percent community bank leverage ratio requirement as established under the 2019 final rule (transition interim final rule).⁷ Specifically, the transition interim final rule provides that, once the statutory interim final rule ceases to apply, the community bank leverage ratio will be 8 percent in the second quarter through fourth quarter of calendar year 2020, 8.5 percent in calendar year 2021, and 9 percent thereafter. The transition interim final rule also modifies the two-quarter grace period for a qualifying community banking organization to account for the graduated increase in the community bank leverage ratio requirement. The interim final rules do not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

The transition interim final rule extends the 8-percent community bank leverage ratio through December 31, 2020, in the event the statutory interim final rule terminates before December 31, 2020. Thus, even if the statutory

⁶ 85 FR 22924 (April 23, 2020).

⁷ 85 FR 22930 (April 23, 2020).

interim final rule were to terminate prior to December 31, 2020, the community bank leverage ratio would continue to be set at 8 percent for the remainder of 2020. Section 201 of EGRRCPA requires a qualifying community banking organization to exceed the community bank leverage ratio established by the agencies in order to be considered to have met the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the “well capitalized” capital ratio requirements, whereas section 4012 of the CARES Act requires that a qualifying community banking organization meet or exceed an 8 percent community bank leverage ratio to be considered the same.

In the 2019 final rule, the agencies adopted a 9-percent community bank leverage ratio requirement on the basis that this threshold, with complementary qualifying criteria, generally maintains the current level of regulatory capital held by qualifying banking organizations and supports the agencies’ goals of reducing regulatory burden while maintaining safety and soundness. The agencies intend for the graduated approach under the transition interim final rule to provide community banking organizations with sufficient time to meet a 9-percent community bank leverage ratio requirement while they also focus on supporting lending to creditworthy households and businesses. This latter goal is particularly critical given the recent strain on the U.S. economy caused by COVID-19.

Consistent with section 201(c) of EGRRCPA, under the transition interim final rule, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized during a two-quarter grace period so long as the banking organization maintains a leverage ratio of the following: Greater than 7 percent in the second quarter through fourth quarter of calendar year 2020, greater than 7.5 percent in calendar year 2021, and greater than 8 percent thereafter.⁸ A banking

⁸ While the statutory interim final rule is in effect, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized so long as the banking organization maintains a leverage ratio of 7 percent or greater during a two-quarter grace period. Similarly, while the statutory interim final rule is in effect, a banking organization that fails to meet the qualifying criteria by the end of the grace period

organization that fails to meet the qualifying criteria by the end of the grace period or reports a leverage ratio of equal to or less than 7 percent in the second through fourth quarters of calendar year 2020, equal to or less than 7.5 percent in calendar year 2021, or equal to or less than 8 percent thereafter, would be required to comply immediately with the generally applicable rule and file the appropriate regulatory reports.

The agencies adopted in the 2019 final rule a two-quarter grace period with a leverage ratio requirement that is 1 percentage point below the community bank leverage ratio on the basis that this grace period would appropriately mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization’s risk profile from quarter to quarter, while capturing more permanent changes in a banking organization’s risk profile. The agencies maintained this approach in the interim final rules because they believed that this approach is appropriate and provides a qualifying community banking organization whose leverage ratio falls below the applicable community bank leverage ratio requirement a reasonable amount of time to once again satisfy that requirement. This approach is consistent with section 201(b)(2) of EGRRCPA, which directs the agencies to establish procedures for the treatment of a qualifying community bank whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

The agencies received one public comment that addressed the substance of the interim final rules. The commenter urged the agencies to revert to a 9 percent community bank leverage ratio by January 1, 2022, which is consistent with the transition interim final rule. The agencies are adopting as final the interim final rules with no changes.

III. Final Rule

Under the final rule, a qualifying community banking organization must have a leverage ratio equal to or greater than 8 percent beginning in the second quarter of calendar year 2020. If the national emergency is terminated during 2020, under the final rule, a qualifying community banking organization must have a leverage ratio greater than 8

or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

percent for the remainder of calendar year 2020. Subsequently, a qualifying community banking organization must have a leverage ratio greater than 8.5 percent through calendar year 2021 and greater than 9 percent thereafter.⁹

The final rule also includes the modified two-quarter grace period for a qualifying community banking organization to take into account the graduated increase in the community bank leverage ratio requirement.¹⁰ Specifically, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, will generally still be deemed well capitalized during a two-quarter grace period so long as the banking organization maintains a leverage ratio of the following: greater than 7 percent in the second quarter through fourth quarter of calendar year 2020, greater than 7.5 percent in calendar year 2021, and greater than 8 percent thereafter.¹¹

The final rule does not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

⁹ The provisions under the final rule are effective November 9, 2020. Banking organizations will continue to be subject to the requirements under the statutory interim final rule or transition interim final rule for purposes of filing their Consolidated Report of Condition and Income (Call Report) or Form FR Y-9C, as applicable. A banking organization’s compliance with capital requirements for a quarter prior to the final rule’s effective date shall be determined according to the generally applicable rule unless the banking organization has filed its Call Report or FR Y-9C report, as applicable, for the prior quarter and has indicated that it has elected to use the community bank leverage ratio framework.

¹⁰ Consistent with the 2019 final rule, a banking organization that ceases to satisfy the qualifying criteria as a result of a business combination also will receive no grace period and will be required to comply with the generally applicable rule.

¹¹ Prior to the termination date, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized so long as the banking organization maintains a leverage ratio of 7 percent or greater during a two-quarter grace period. Similarly, prior to the termination date, a banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

TABLE 1—SCHEDULE OF COMMUNITY BANK LEVERAGE RATIO REQUIREMENTS

Calendar year	Community bank leverage ratio requirement (percent)	Leverage ratio requirement under the applicable grace period (percent)
2020	8	7
2021	8.5	7.5
2022 and thereafter	9	8

The agencies are maintaining the 2019 final rule's requirement that the grace period will begin as of the end of the calendar quarter in which the electing banking organization ceases to satisfy any of the qualifying criteria (so long as the banking organization maintains a leverage ratio of greater than the requirement for the applicable grace period) and will end after two consecutive calendar quarters. For example, if an electing banking organization, which had met all qualifying criteria as of March 31, 2020, no longer met one of the qualifying criteria as of May 15, 2020, and still had not met the criteria as of the end of that quarter, the grace period for the banking organization would have begun as of the end of the quarter ending June 30, 2020. The banking organization may continue to use the community bank leverage ratio framework as of September 30, 2020 (so long as the banking organization maintains a leverage ratio of greater than the requirement for the applicable grace period), but would need to comply fully with the generally applicable rule and associated reporting requirements as of December 31, 2020, unless the banking organization once again meets all qualifying criteria by that date.

If an electing banking organization is in the grace period when the community bank leverage ratio increases, the banking organization would be subject, as of the date of the change, to both the higher community bank leverage ratio requirement and higher grace period leverage ratio requirement. For example, if the electing banking organization that were to meet all qualifying criteria as of September 30, 2020, but reports a 7.2 percent leverage ratio as of December 31, 2020, and meets all the other qualifying criteria, the grace period for such a banking organization would begin as of the end of the fourth quarter 2020. The banking organization may continue to use the community bank leverage ratio framework as of March 31, 2021, if the banking organization reports a leverage ratio of greater than 7.5 percent, and would need to comply fully with the generally applicable rule

and associated reporting requirements as of June 30, 2021, unless the banking organization reports a leverage ratio of greater than 8.5 percent (and meets all the other qualifying criteria) by that date. In this example, if the banking organization has a leverage ratio equal to or less than 7.5 percent as of March 31, 2021, it would not be eligible to use the community bank leverage ratio framework and would be subject to the requirements of the generally applicable rule and associated reporting requirements as of March 31, 2021.

As mentioned above, the grace period for an electing community banking organization is limited to two consecutive calendar quarters. For example, if an electing banking organization were to meet all qualifying criteria as of June 30, 2021, but reports a 8.3 percent leverage ratio (while meeting all the other qualifying criteria) as of the end of September 30, 2021, the grace period for such a banking organization would begin as of the end of the third quarter 2021. The banking organization may continue to use the community bank leverage ratio framework as of December 31, 2021, if the banking organization reports a leverage ratio of greater than 7.5 percent, and would need to comply fully with the generally applicable rule and associated reporting requirements as of March 31, 2022, unless the banking organization reports a leverage ratio of greater than 9.0 percent (and meets all the other qualifying criteria) by that date.

IV. Impact Analysis

The final rule will affect all banking organizations (*i.e.*, depository institutions and depository institution holding companies) that qualify for the community bank leverage ratio framework and elect to adopt it. Based on data as of March 31, 2020, there are 5,189 banking organizations with less than \$10 billion in total consolidated assets.¹² The agencies estimate that approximately 96 percent of these banking organizations qualify to use the community bank leverage ratio framework under the 8 percent requirement in effect for the remainder of calendar year 2020. As of March 31, 2020, the temporary reduction in the community bank leverage ratio requirement during the remainder of calendar year 2020 from 9 percent to 8 percent will increase the scope of qualifying community banks by approximately 480 depository institutions and approximately 20

depository institution holding companies (holding companies).

As of March 31, 2020, approximately 39 percent of qualifying banking organizations have elected to use the community bank leverage ratio framework. Approximately 92 percent of these banking organizations have total assets of less than \$1 billion. As of March 31, 2020, 1,709 depository institutions have elected to use the community bank leverage ratio framework. As of the same period, 29 holding companies have elected to use the community bank leverage ratio framework. The agencies anticipate that banking organizations that have elected to use the community bank leverage ratio framework should be able to manage the transition in the leverage ratio requirement under the final rule in a prudent manner, given that the final rule provides a graduated transition back to a 9 percent leverage ratio requirement by 2022.

V. Administrative Law Matters

A. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.¹³ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁴

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹⁵

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that

¹³ 5 U.S.C. 801 *et seq.*

¹⁴ 5 U.S.C. 801(a)(3).

¹⁵ 5 U.S.C. 804(2).

¹² Based on data reported on Form FR Y–9C and the Reports of Condition and Income (Call Reports).

no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not contain any information collection requirements. However, in connection with the transition interim final rule, the Board temporarily revised the Financial Statements for Holding Companies (FR Y-9 reports; OMB No. 7100-0128) and invited comment on a proposal to extend that collection of information for three years, with revision. No comments were received regarding this proposal under the PRA. The Board has now extended, with revision, the FR Y-9 reports, as proposed, to align the reporting instructions with this final rule. The Board will submit information collection burden estimates to OMB to finalize the revisions. All of the updates to the FR Y-9C noted in the transition interim final rule should be minimal and result in zero net change in hourly burden.

Additionally, in connection with the transition interim final rule, the agencies made revisions to the Call Reports (OCC OMB Control No. 1557-0081; Board OMB Control No. 7100-0036; and FDIC OMB Control No. 3064-0052) and the FFIEC 101 (OCC OMB Control No. 1557-0239; Board OMB Control No. 7100-0319; FDIC OMB Control No. 3064-0159). The final changes to the Call Reports, the FFIEC 101, and their related instructions are addressed in a separate **Federal Register** notice.¹⁶

Revision, With Extension, of the Following Information Collections

(1) *Report Title:* Financial Statements for Holding Companies.

Agency form number: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS.

OMB control number: 7100-0128.

Effective date: Currently effective.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,¹⁷ securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y-9C (non-advanced approaches CBLR

HCs with less than \$5 billion in total assets): 71; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35; FR Y-9C (non-advanced approaches, non CBLR, HCs with less than \$5 billion in total assets): 84; FR Y-9C (non-advanced approaches, non CBLR HCs, with \$5 billion or more in total assets): 154; FR Y-9C (advanced approaches HCs): 19; FR Y-9LP: 434; FR Y-9SP: 3,960; FR Y-9ES: 83; FR Y-9CS: 236.

Estimated average hours per response:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 29.17 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35.14; FR Y-9C (non-advanced approaches, non CBLR HCs, with less than \$5 billion in total assets): 41.01; FR Y-9C (non-advanced approaches, non CBLR, HCs with \$5 billion or more in total assets): 46.98 hours; FR Y-9C (advanced approaches HCs): 48.80 hours; FR Y-9LP: 5.27 hours; FR Y-9SP: 5.40 hours; FR Y-9ES: 0.50 hours; FR Y-9CS: 0.50 hours.

Recordkeeping

FR Y-9C (non-advanced approaches HCs with less than \$5 billion in total assets), FR Y-9C (non-advanced approaches HCs with \$5 billion or more in total assets), FR Y-9C (advanced approaches HCs), and FR Y-9LP: 1.00 hour; FR Y-9SP, FR Y-9ES, and FR Y-9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 8,284 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 4,920; FR Y-9C (non-advanced approaches non CBLR HCs with less than \$5 billion in total assets): 13,779; FR Y-9C (non-advanced approaches non CBLR HCs with \$5 billion or more in total assets): 28,940 hours; FR Y-9C (advanced approaches HCs): 3,709 hours; FR Y-9LP: 9,149 hours; FR Y-9SP: 42,768 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

Recordkeeping

FR Y-9C: 1,452 hours; FR Y-9LP: 1,736 hours; FR Y-9SP: 3,960 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

General description of report:

The FR Y-9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.¹⁸

The FR Y-9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of \$3 billion or more.¹⁹ The FR Y-9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y-9C, as well as by each of its subsidiary HCs.²⁰ The report consists of standardized financial statements.

The FR Y-9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than \$3 billion. In a banking organization with total consolidated assets of less than \$3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y-9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y-9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y-9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y-9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y-9 reports. The data items included on the FR Y-9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y 9 family of reports on bank holding companies pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)), as amended by sections 369(8) and 604(h)(2) of the

Domestic Offices Only and Total Assets Less Than \$5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

¹⁹ Under certain circumstances described in the FR Y-9C's General Instructions, HCs with assets under \$3 billion may be required to file the FR Y-9C.

²⁰ A top-tier HC may submit a separate FR Y-9LP on behalf of each of its lower-tier HCs.

¹⁶ See 85 FR 44361 (May 22, 2020).

¹⁷ A savings and loan holding company (SLHC) must file one or more of the FR Y-9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

¹⁸ The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with

Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act); on U.S. intermediate holding companies pursuant to section 5 of the BHC Act (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The obligation to submit the FR Y 9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y-9CS, which is voluntary.

With respect to the FR Y 9C report, Schedule HI's data item 7(g) "FDIC deposit insurance assessments," Schedule HC P's data item 7(a) "Representation and warranty reserves for 1 4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies," and Schedule HC P's data item 7(b) "Representation and warranty reserves for 1 4 family residential mortgage loans sold to other parties" are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y 9C report, Schedule HC's memorandum item 2.b. and the FR Y 9SP report, Schedule SC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y-9C, Schedule HC-C for loans modified under Section 4013, data items Memorandum items 16.a, "Number of Section 4013 loans outstanding"; and

Memorandum items 16.b, "Outstanding balance of Section 4013 loans" are considered confidential. While the Board generally makes institution-level FR Y-9C report data publicly available, the Board is collecting Section 4013 loan information as part of condition reports for the impacted HCs and the Board considers disclosure of these items at the HC level would not be in the public interest. Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8). In addition, holding companies may be reluctant to offer modifications under Section 4013 if information on these modifications made by each holding company is publicly available, as analysts, investors, and other users of public FR Y-9C report information may penalize an institution for using the relief provided by the CARES Act. The Board may disclose Section 4013 loan data on an aggregated basis, consistent with confidentiality.

Aside from the data items described above, the remaining data items on the FR Y-9C report and the FR-Y 9SP report are generally not accorded confidential treatment. The data items collected on FR Y-9LP, FR Y-9ES, and FR Y-9CS reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports each respectively direct the financial institution to retain the work papers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's work papers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to consider whether the rules it proposes will have a

significant economic impact on a substantial number of small entities.²¹ The RFA requires an agency to prepare a final regulatory flexibility analysis when it promulgates a final rule after being required to publish a general notice of proposed rulemaking.²² As discussed previously, the agencies have decided to adopt, without changes, revisions to the community bank leverage ratio framework made under the statutory interim final rule and the transition interim final rule. There is no general notice of proposed rulemaking associated with this final rule. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to the promulgation of this final rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),²³ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.²⁴ Each Federal banking agency has determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

²¹ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with annual receipts of \$41.5 million or less. See 13 CFR 121.201.

²² 5 U.S.C. 604.

²³ 12 U.S.C. 4802(a).

²⁴ 12 U.S.C. 4802.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act²⁵ requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the final rule in a simple and straightforward manner. The agencies did not receive any comments on the use of plain language.

F. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.²⁶ Therefore, because the OCC has found good cause to dispense with notice and comment for the final rule, the OCC concludes that the requirements of UMRA do not apply to this final rule.

Authority and Issuance

For the reasons set forth in the joint preamble, the interim final rules which were published at 85 FR 22924 and 85 FR 22930 on April 23, 2020, are adopted as a final rule by the OCC, Board, and FDIC without change.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020-19922 Filed 10-8-20; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0989; Product Identifier 2019-NM-097-AD; Amendment 39-21265; AD 2020-20-09]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directives (ADs) 2015-14-07, 2016-07-10, and 2016-24-09. AD 2015-14-07 applied to certain The Boeing Company Model 787-8 airplanes. AD 2016-07-10 and AD 2016-24-09 applied to all The Boeing Company Model 787-8 and 787-9 airplanes. ADs 2015-14-07, 2016-07-10, and 2016-24-09 required actions related to certain flight control module (FCM) software. This AD requires installing flight control electronics (FCE) common block point 5 (CBP5) software, which terminates the requirements of the ADs superseded by this AD. This AD was prompted by certain deficiencies in the FCM software, including a report of an unannounced dual symmetric inboard slat skew. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 13, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 6, 2019 (84 FR 18707, May 2, 2019).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 2, 2016 (81 FR 86912, December 2, 2016).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 20, 2015 (80 FR 42014, July 16, 2015).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet

<https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety 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-2019-0989.

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-2019-0989; 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, 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:

Maureen G. Fallon, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3690; email: maureen.g.fallon@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede the following ADs:

- AD 2015-14-07, Amendment 39-18205 (80 FR 42014, July 16, 2015) (“AD 2015-14-07”). AD 2015-14-07 applied to certain Model 787-8 airplanes.

- AD 2016-07-10, Amendment 39-18455 (81 FR 18741, April 1, 2016) (“AD 2016-07-10”). AD 2016-07-10 applied to all Model 787-8 and 787-9 airplanes.

- AD 2016-24-09, Amendment 39-18726 (81 FR 86912, December 2, 2016) (“AD 2016-24-09”). AD 2016-24-09 applied to all Model 787-8 and 787-9 airplanes.

The NPRM published in the **Federal Register** on January 2, 2020 (85 FR 23). The NPRM was prompted by deficiencies in the FCM software, including reports that, in certain weather conditions, erroneous low airspeed data may be displayed to the flightcrew before detection and annunciation via engine-indicating and crew alerting system (EICAS) messages, a report indicating that all three FCMs might simultaneously reset if continuously powered on for 22 days,

²⁵ 12 U.S.C. 4809.

²⁶ See 2 U.S.C. 1532(a).

and one report of unannounced dual symmetric inboard slat skew. The NPRM proposed to require installing FCE CBP5 software, which would also address the identified unsafe conditions and terminate the requirements of the ADs superseded by this AD. The FAA is issuing this AD to address deficiencies in the FCM software that could prevent continued safe flight and landing; to prevent unrealistic, sudden drops in displayed airspeed at high actual airspeed, which could lead to pilot control inputs that could exceed the structural capability of the airplane; to prevent simultaneous resets of all three FCMs, which could result in flight control surfaces not moving in response to flight crew inputs for a short time and consequent temporary loss of controllability; and to address potential unannounced dual symmetric inboard slat skew, which can result in adverse handling characteristics of the aircraft.

Changes Since the NPRM Was Issued

The FAA has reviewed Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020 (the FAA referred to Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018, as an appropriate source of service information for accomplishing the actions specified in the NPRM) and has revised this AD to refer to Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020. This service information removes a certain airplane line number from the effectivity; otherwise, there is no substantive change from Issue 001, dated December 18, 2018. The FAA has added paragraph (p) to this AD to provide credit for actions done prior to the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018. Subsequent paragraphs have been redesignated accordingly.

Explanation of Concurrent Requirements

This AD requires the accomplishment of Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, prior to or concurrently with the software installation specified in paragraph (n)(1) of this AD. AD 2019–08–05, Amendment 39–19626 (84 FR 18707, May 2, 2019) (“AD 2019–08–05”) also requires the accomplishment of Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, prior to or concurrently with the installation of hydraulic tubing and a pressure-operated check valve,

which corrects a different unsafe condition; so the concurrent requirement is in both ADs. The compliance time for this AD is shorter than the compliance time for AD 2019–08–05.

Explanation of Changes to Paragraphs (n) and (o) of This AD

The FAA revised paragraph (n)(3) of this AD and removed paragraph (n)(4) of this AD. This revision clarifies the compliance time for installation of a new displays and crew alerting (DCA) system and maintenance system (MS) software, clarifies “later-approved version” in regard to DCA MS software, and clarifies that this action applies only to certain airplanes. The FAA also revised the introductory text to paragraph (n) of this AD to clarify the applicable actions.

The FAA also revised paragraphs (o)(1) and (2) of this AD which clarify “later-approved version” in regard to CBP5 and DCA MS CBP4 software.

Explanation of Changes to Paragraph (q)(3) of This AD

The FAA revised paragraph (q)(3) of this AD to clarify the terminating action. The intent of paragraph (q)(3) of this AD is to require the removal of figure 1 to paragraph (k) of this AD after the actions required by paragraph (n) or (o) of this AD have been accomplished on all affected airplanes in an operator’s fleet. Accomplishment of these actions then terminates paragraph (k) of this AD for all affected airplanes in an operator’s fleet.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International (ALPA) stated its support for the NPRM. United Airlines indicated no objection to the NPRM.

Request to Clarify What Prompted the Unsafe Condition

Boeing asked that a clarification of the number of occurrences of unannounced dual symmetric inboard slat skew events be added to the relevant sections in the proposed AD. Boeing stated that there has only been a single unannounced dual symmetric inboard slat skew event.

The FAA agrees with the commenter’s request for clarification, because there has only been one occurrence of an unannounced dual symmetric inboard

slat skew. The FAA has revised the **SUMMARY**, Discussion section, and paragraph (e) of this AD accordingly. However, the section titled “Actions Since ADs 2015–14–07, 2016–07–10, and 2016–24–09 Were Issued,” which was included in the proposed AD, is not carried over in this final rule.

Boeing also asked that the FAA differentiate the number of occurrences of unannounced dual symmetric inboard slat skew from the outboard slat skew issue, which is the subject of AD 2019–20–07. Boeing noted that the potential for unannounced dual symmetric inboard slat skew, addressed by this AD, is not related to the outboard slat skew issue that is the subject of that AD.

Although the FAA agrees that the issues are not related, that clarification is not required in the content of this AD. Therefore, the FAA has not changed this AD in this regard.

Request To Allow Installation of Later-Approved Software Versions

Boeing asked that the FAA allow installation of later-approved FCE software in lieu of the “FCM CBP5” software identified in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018. Boeing stated that the use of “later-approved software” language was used in AD 2019–08–05, Amendment 39–19626 (84 FR 18707, May 2, 2019) (“AD 2019–08–05”) (referenced in the proposed AD), and will reduce the need for alternative method of compliance (AMOC) requests for future FCM software updates.

The FAA disagrees with the commenter’s request because the Actions Required for Compliance section in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018, already includes an allowance for installation of a later-approved software part number. Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020, also includes that allowance. Therefore, the FAA has not changed this AD in this regard.

Request To Identify Certain Required for Compliance (‘RC’) Actions

Boeing asked that the FAA revise paragraph (n)(2) of the proposed AD to specify accomplishment of only the concurrent or prior actions identified as RC in the service bulletin. Boeing stated that installation of the “CMCF LDI DB” [central maintenance computer function (CMCF) loadable diagnostic information (LDI) database (DB)] software is not required to correct the unsafe condition.

Boeing added that AD 2019–08–05 specifies the applicable service bulletin actions identified as RC.

The FAA agrees with the commenter’s request, because installation of the CMCF LDI DB software is not required to correct the unsafe condition. If that software were cited in the requirements of this AD, any update to this software would require approval of an AMOC. The FAA has changed paragraph (n)(2) of this AD to specify doing only the applicable actions (including software installation) that are identified as RC.

Request To Clarify Intent of AD

Boeing asked that the FAA change paragraph (e) of the proposed AD to clarify that the AD is also prompted by the need to provide terminating action for the three ADs that are superseded by this AD. Boeing stated that this change clarifies the intent of the AD.

The FAA agrees with the commenter’s request to change the text in paragraph (e) of this AD. The FAA agrees that this AD is terminating action for the interim actions identified in two of the superseded ADs: 2016–07–10 and 2016–24–09. The superseding of those prior ADs implies that this AD mitigates the unsafe condition of those prior ADs. This AD was prompted by reports of an identified unsafe condition that this AD is intended to correct. The FAA has revised the **SUMMARY**, Discussion section, and paragraph (e) of this AD to include the unsafe conditions that prompted the superseded ADs, since this AD also addresses those unsafe conditions.

Request To Include Credit for Previously Accomplished Actions

American Airlines (AA) asked for the addition of credit for previous software installations done using the following service information.

- Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 001, dated July 31, 2017.
- Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 001, dated July 31, 2017, in conjunction with Boeing Information Notice B787–A–27–

00–0039–01A–931E–D, Issue 001, dated September 7, 2017.

AA stated that equivalent credit was granted in paragraphs (i)(3) and (4) of AD 2019–08–05 (which the FAA notes also requires the concurrent installation of certain software in accordance with Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018), although AD 2019–08–05 is unrelated to the NPRM.

The FAA does not agree with the commenter’s request. The latest version of the CMCF software specified in Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, must be installed concurrently with the FCE CBP5 software in order for the maintenance system to work properly. Therefore, the FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD 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 AD.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020. This service information describes procedures for installing FCE CBP5 software, and applicable concurrent requirements (installing certain software).

The FAA also reviewed Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14,

2017. This service information describes procedures for installing new DCA system and MS software and doing a software check.

This AD also requires Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, which the Director of the Federal Register approved for incorporation by reference as of June 6, 2019 (84 FR 18707, May 2, 2019).

This AD also requires Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016, which the Director of the Federal Register approved for incorporation by reference as of December 2, 2016 (81 FR 86912, December 2, 2016).

This AD also requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of August 20, 2015 (80 FR 42014, July 16, 2015).

- Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.
- Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015.
- Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

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

Costs of Compliance

The FAA estimates that this AD affects 78 airplanes of U.S. registry.

The compliance time has passed for the retained requirements in this AD, so all affected airplanes should already be in compliance with those requirements. Therefore, this AD imposes no additional financial burden on any U.S. operator.

However, if a noncompliant airplane is imported and placed on the U.S. Register in the future, the FAA estimates the following costs to comply with the retained actions:

ESTIMATED COSTS FOR RETAINED REQUIREMENTS

Action	Labor cost	Parts cost	Cost per product
Retained requirements of AD 2015–14–07 (11 airplanes).	4 work-hours × \$85 per hour = \$340	\$0	\$340
Retained requirements of AD 2016–07–10	1 work-hour × \$85 per hour = \$85	0	85
Retained requirements of AD 2016–24–09	1 work-hour × \$85 per hour = \$85	0	85

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

ESTIMATED COSTS FOR NEW REQUIREMENTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New software installation	2 work-hours × \$85 per hour = \$170	\$0	\$170	\$13,260

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.

Regulatory Findings

The FAA has determined that 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:
 - a. Removing Airworthiness Directive (AD) 2015–14–07, Amendment 39–18205 (80 FR 42014, July 16, 2015); AD 2016–07–10, Amendment 39–18455 (81 FR 18741, April 1, 2016); and AD 2016–24–09, Amendment 39–18726 (81 FR 86912, December 2, 2016); and
 - b. Adding the following new AD:

2020–20–09 The Boeing Company:
 Amendment 39–21265; Docket No. FAA–2019–0989; Product Identifier 2019–NM–097–AD.

(a) Effective Date

This AD is effective November 13, 2020.

(b) Affected ADs

- This AD replaces the ADs identified in paragraphs (b)(1) through (3) of this AD.
- (1) AD 2015–14–07, Amendment 39–18205 (80 FR 42014, July 16, 2015) (“AD 2015–14–07”).
 - (2) AD 2016–07–10, Amendment 39–18455 (81 FR 18741, April 1, 2016) (“AD 2016–07–10”).
 - (3) AD 2016–24–09, Amendment 39–18726 (81 FR 86912, December 2, 2016) (“AD 2016–24–09”).

(c) Applicability

This AD applies to all The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by deficiencies in the FCM software, including reports that, in certain weather conditions, erroneous low airspeed data may be displayed to the flightcrew before detection and annunciation via engine-indicating and crew alerting system (EICAS) messages, a report indicating that all three FCMs might simultaneously reset if continuously powered on for 22 days, and one report of unannounced dual symmetric inboard slat skew. The FAA is issuing this AD to address deficiencies in the FCM software that could prevent continued

safe flight and landing; to prevent unrealistic, sudden drops in displayed airspeed at high actual airspeed, which could lead to pilot control inputs that could exceed the structural capability of the airplane; to prevent simultaneous resets of all three FCMs, which could result in flight control surfaces not moving in response to flight crew inputs for a short time and consequent temporary loss of controllability; and to address potential unannounced dual symmetric inboard slat skew, which can result in adverse handling characteristics of the aircraft.

(f) Compliance

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

(g) Retained FCM Software Installation Requirement of AD 2015–14–07, With No Changes

This paragraph restates the requirements of the introductory text to paragraph (g) and paragraphs (g)(1), (2), and (4) of AD 2015–14–07 (paragraph (g)(3) of AD 2015–14–07 is not retained in this AD), with no changes. For Model 787–8 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015: Within 6 months after August 20, 2015 (the effective date of AD 2015–14–07), do one of the actions specified in paragraphs (g)(1) through (3) of this AD.

(1) Use the onboard data load function (ODLF) to install FCM Block Point 3 software (including FCM operational program software (OPS), FCM loadable diagnostic information (LDI) database (DB) software, and FCM air data reference function (ADRF) DB software), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015.

(2) Use the ODLF to install FCM Block Point 4 software (including FCM OPS, FCM LDI DB software, FCM ADRF DB software, and central maintenance computer function (CMCF) LDI DB software), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

(3) Install any later FAA-approved FCM software version using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(h) Retained Concurrent Requirements of AD 2015–14–07, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2015–14–07, with no changes. For Group 1 airplanes, as identified in Boeing Alert Service Bulletin B787–

81205–SB270020–00, Issue 002, dated February 12, 2015: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, use the ODLF to install FCM OPS, FCM LDI DB, and CMCF LDI DB software, or at a minimum install the FCM LDI DB and CMCF LDI DB software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.

(i) Retained Parts Installation Prohibition of AD 2015–14–07, With No Changes

This paragraph restates the provisions of paragraph (i) of AD 2015–14–07, with no

changes. After installation of the software specified in paragraphs (g) and (h) of this AD, no person may install any previous versions of the FCM OPS, FCM LDI DB, FCM ADRF DB, or CMCF LDI DB software on any airplane.

(j) Retained Credit for Certain Previous Actions in AD 2015–14–07, With No Changes

This paragraph restates the provisions of paragraph (j) of AD 2015–14–07, with no changes. This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before August 20, 2015 (the effective date of AD 2015–14–07), using Boeing Alert Service

Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014.

(k) Retained Airplane Flight Manual (AFM) Revision of AD 2016–07–10, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–07–10, with no changes. Within 15 days after April 14, 2016 (the effective date of AD 2016–07–10), revise the applicable existing Boeing 787 AFM to add a “Non-normal Procedure” that includes the information in figure 1 to paragraph (k) of this AD. This may be done by inserting a copy of this AD into the existing AFM.

Figure 1 to paragraph (k)

Airspeed Drop

In the event of a sudden, unrealistic drop in indicated airspeed, do not apply large, abrupt control column inputs. Fly the airplane with normal pitch and power settings. If manual flight is needed, disconnect the autopilot prior to making manual flight control inputs.

(l) Retained FCM Reset Requirement of AD 2016–24–09, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–24–09, with no changes. Within 7 days after December 2, 2016 (the effective date of AD 2016–24–09), do the actions specified in paragraph (l)(1) or (2) of this AD. Repeat the action specified in paragraph (l)(1) or (2) of this AD thereafter at intervals not to exceed 21 days.

(1) Cycle the airplane electrical power, in accordance with “Option 1” of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016.

(2) Cycle power to the left, center, and right FCMs, in accordance with “Option 2” of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016.

(m) Retained Credit for Previous Actions in AD 2016–24–09, With No Changes

This paragraph restates the provisions of paragraph (h) of AD 2016–24–09, with no changes. This paragraph provides credit for the actions specified in paragraphs (l)(1) and (2) of this AD, if those actions were performed before December 2, 2016 (the effective date of AD 2016–24–09), using one of the service information documents specified in paragraphs (m)(1) through (3) of this AD.

(1) Boeing Multi-Operator Message MOM–MOM–16–0711–01B, dated October 21, 2016.

(2) Boeing Multi-Operator Message MOM–MOM–16–0711–01B(R1), dated November 17, 2016.

(3) Boeing Multi-Operator Message MOM–MOM–16–0711–01B(R2), dated November 17, 2016.

(n) New Requirement for Software Installation

For airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020: Do the actions specified in paragraphs (n)(1) through (3) of this AD.

(1) Within 6 months after the effective date of this AD: Do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020.

Note 1 to paragraphs (n)(1) and (o)(1): Guidance for accomplishing the actions required by paragraphs (n)(1) and (o)(1) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 003, dated July 7, 2020, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020.

(2) Before or concurrently with accomplishment of the actions specified in paragraph (n)(1) of this AD: Do all applicable actions (including software installation on the left and right flight control modules (FCMs)) identified as RC in and, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018.

Note 2 to paragraph (n)(2): The concurrent requirements specified in paragraph (n)(2) of this AD are also concurrent requirements for the actions required by paragraph (g)(2) of AD 2019–08–05, Amendment 39–19626 (84 FR 18707, May 2, 2019) (“AD 2019–08–05”).

(3) Within 6 months after the effective date of this AD, identify the version of the displays and crew alerting (DCA) system and maintenance system (MS) software installed.

If the installed version is not DCA MS CBP4 or a later-approved version of DCA MS software, within 6 months after the effective date of this AD, install a new DCA system and MS software and do a software check, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or The Boeing Company Organization Designation Authorization (ODA) after issuance of Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017.

(o) Software Version Identification

For airplanes not identified in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020, that have an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD: Within 6 months after the effective date of this AD, do the actions specified in paragraphs (o)(1) and (2) of this AD.

(1) Identify the version of the flight control electronics (FCE) common block point (CBP) software installed. If the installed version is not CBP5 or later-approved version: Within 6 months after the effective date of this AD, install CBP5 or later-approved version, in accordance with the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or The Boeing Company ODA after

issuance of Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020. A review of airplane maintenance records is acceptable in lieu of this identification requirement, if the software version can be conclusively determined from that review.

(2) Identify the version of the DCA system and MS software installed. If the installed version is not DCA MS CBP4 or a later-approved version of DCA MS software: Within 6 months after the effective date of this AD, install a new DCA system and MS software and do a software check, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or The Boeing Company ODA after issuance of Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017.

(p) Credit for Previous Actions

This paragraph provides credit for actions specified in paragraphs (n)(1) and (o)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018.

(q) Terminating Action for Certain Requirements of This AD

(1) Except as specified in paragraph (q)(2) of this AD: Accomplishment of the actions required by paragraph (n) or (o) of this AD, as applicable, terminates the requirements of paragraphs (g) through (m) of this AD.

(2) Accomplishment of the actions required by paragraph (n) or (o) of this AD, as applicable, terminates the requirements of paragraph (k) of this AD for that airplane only.

(3) Accomplishment of the actions required by paragraph (n) or (o) of this AD, as applicable, on all affected airplanes in an operator's fleet, and subsequent removal of figure 1 to paragraph (k) of this AD from the existing AFM, terminates the requirements of paragraph (k) of this AD for the fleet. The removal must be done no later than 6 months after the effective date of this AD.

(r) Parts Installation Prohibition

As of the effective date of this AD, installation on any airplane of FCE CBP software with a version prior to CBP5 is prohibited.

(s) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 (t)(1) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-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 ODA that has been authorized by the Manager, Seattle 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 approved previously for AD 2015–14–07, AD 2016–07–10, and AD 2016–24–09, are approved as AMOCs for the corresponding provisions of paragraphs (g) through (l) of this AD.

(t) Related Information

(1) For more information about this AD, contact Maureen G. Fallon, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3690; email: maureen.g.fallon@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (u)(7) and (8) of this AD.

(u) 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 November 13, 2020.

(i) Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 002, dated July 7, 2020.

(ii) Boeing Alert Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017.

(4) The following service information was approved for IBR on June 6, 2019 (84 FR 18707, May 2, 2019).

(i) Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018.

(ii) [Reserved]

(5) The following service information was approved for IBR on December 2, 2016 (81 FR 86912, December 2, 2016).

(i) Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016.

(ii) [Reserved]

(6) The following service information was approved for IBR on August 20, 2015 (80 FR 42014, July 16, 2015).

(i) Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.

(ii) Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015.

(iii) Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

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

(8) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(9) 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 September 23, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22236 Filed 10–8–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0627; Airspace Docket No. 19–ANM–29]

RIN 2120–AA66

Establishment of Class E Airspace; Granby, CO

Correction

In the rule document 2020–21888 appearing on pages 62572–62573 in the issue of Monday, October 5, 2020, make the following correction:

§ 71.1 [Corrected]

- 1. On page 62573, in the second column, line twenty, “2.2° miles” should read “2.2 miles”
- 2. On page 62573, in the second column, line twenty-one, “110β bearing” should read “110° bearing”

[FR Doc. C1–2020–21888 Filed 10–8–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200831–0029]

RIN 0694–A110

Revisions to the Unverified List (UVL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing forty (40) persons from the Unverified List (“UVL”) and adding twenty-six (26) persons to the UVL. The 40 persons are removed from the UVL on the basis that BIS was able to verify their *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) on the basis of a successful end-use check or because the companies are no longer registered to do business in the country of listing and are no longer involved in U.S. exports. The 26 persons are being added to the UVL on the basis that BIS could not verify their *bona fides* because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government’s control.

DATES: This rule is effective October 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Kevin Kurland, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–4255 or by email at UVLRequest@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Unverified List (UVL), found in Supplement No. 6 to part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) (EAR), contains the names and addresses of foreign persons who are or have been parties to a transaction, as such parties are described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose *bona fides* the Bureau of Industry and Security (BIS) has been unable to verify through an end-use check. BIS may add persons to the UVL when BIS or federal officials acting on BIS’s behalf have been unable to verify a foreign person’s *bona fides* because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for such purposes for reasons outside the U.S. Government’s control.

There are a number of reasons why end-use checks cannot be completed. These include but are not limited to reasons unrelated to the cooperation of the foreign party subject to the end-use check. For example, BIS sometimes initiates end-use checks and cannot find a foreign party at the address indicated on export documents and cannot locate the party by telephone or email. Additionally, BIS sometimes is unable

to conduct end-use checks when host government agencies do not respond to requests to conduct end-use checks, prevent the scheduling of such checks, or refuse to schedule them in a timely manner. Under these circumstances, although BIS has an interest in informing the public of its inability to verify the foreign party’s *bona fides*, there may not be sufficient information to add the foreign person at issue to the Entity List (Supplement No. 4 to part 744 of the EAR) under § 744.11 of the EAR (Criteria for revising the Entity List). In such circumstances, BIS may add the foreign person to the UVL.

Furthermore, BIS sometimes conducts end-use checks but cannot verify the *bona fides* of a foreign party. For example, BIS may be unable to verify *bona fides* if, during the conduct of an end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items. The inability of foreign persons subject to end-use checks to demonstrate their *bona fides* raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR and indicates a risk that such items may be diverted to prohibited end uses and/or end users. However, in such circumstances, BIS may not have sufficient information to establish that such persons are involved in activities described in parts 744 or 746 of the EAR, therefore preventing the placement of the persons on the Entity List. In such circumstances, the foreign persons may be added to the Unverified List.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, reexporters, and transferors to obtain (and keep a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement.

Requests for removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL listings will be made by the Deputy Assistant Secretary for Export

Enforcement, based on a demonstration by the listed person of its *bona fides*.

Changes to the EAR**Supplement No. 6 to Part 744 (“the Unverified List” or “UVL”)**

This rule adds 26 persons to the UVL by amending Supplement No. 6 to Part 744 of the EAR to include their names and addresses. BIS adds these persons in accordance with the criteria for revising the UVL set forth in § 744.15(c) of the EAR, on the basis that BIS could not verify their *bona fides* because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government’s control. The new entries consist of three persons located in Armenia, two in Finland, three in Germany, five in Hong Kong, three in Pakistan, two in Turkey, six in the United Arab Emirates (UAE), and one person located in each of the following countries: China and Mexico. Each listing is grouped within the UVL by country with each party’s name(s) listed in alphabetical order under the country and each entry includes available alias(es) and address(es), as well as the **Federal Register** citation and the date the person was added to the UVL. The UVL is included in the Consolidated Screening List, available at www.export.gov.

Additionally, this rule removes 40 persons from the UVL. BIS is removing these persons pursuant to § 744.15(c)(2) of the EAR or based on a determination that the companies are no longer registered to do business in the listed country and are no longer involved in U.S. exports. This final rule implements the decision to remove the following 40 persons located in China, Hong Kong, Indonesia, and the UAE from the UVL:

China

- Aisin Nantong Technical Center, No 11 Chen Yang Road, Nantong Development Zone Nantong, China;
- Beijing Institute of Nanoenergy and Nanosystems, 30 Xue YuanLu HaiDianQu, Beijing, China 100083;
- Changchun Institute of Applied Chemistry, Chinese Academy of Sciences, 5625 Renmin Street, Changchun City, China 130022;
- Institute of Geology, Chinese Academy of Geological Sciences, No. 26, Baiwanzhuang Street, Beijing, 100037, China;
- Ningbo Zhongxian Optoelectronic Technology Co, Ltd., Floor 11 Technology Innovation Center, No. 1188 Binhai 2nd Road, Hangzhou Bay New District, Ningbo, Zhejiang, China 315336;

- Renmin University, No. 59 Zhongguancun Street, Haidian District, Beijing, China 100872;
- Shanghai Institute of Technical Physics, Chinese Academy of Sciences, 500 Yu Tian Road, Shanghai, China 200083;
- Shanghai SKEQI Automation Engineering Co., Bldg 8, No. 650 Guanghua Road, Songjiang District, Shanghai, China;
- Shi Jia Zhuang Suin Instruments, A-2 No. 99 Yuyuan Road, LuQuan District, Shijiazhuang, China 050000;
- Termei Torch & Tip Company, No. 9 Huanbao 3rd Road, Xinbei District, Changzhou, Jiangsu, China 213034;
- Tongji University, 1239 Siping Road, Shanghai, China 200092;
- Xi'an Caijing Opto-Electronics, Science & Technology Co., Ltd, No. 168, East Zhangba Road, Shaanxi Province, Xi'an City, China;
- Xi'an Jiaotong University, School of Electrical Engineering, No. 28 Xianning West Road, Xi'an, Shaanxi, China 710049;
- Xi'an Jiaotong University, No. 99 Yanxiang Road, Qujiang, Xi'an, China 71000;
- Xi'an Micromach Photon Manufacture Technology, No. 60 Western Road, New High Tech Park, Xi'an, China, 710000;
- Yunnan Observatories, Chinese Academy of Sciences (CAS), No. 396 Yangfangwang, Kunming, Yunnan, China 650216;

Hong Kong

- Advent International, Room 1303 Goldfield Tower, 53-59 Wuhu Street, Kung Hom, Kowloon, Hong Kong; *and* Flat F, 13/F, Block 1, Hong Sing Garden, Tsuen Kwan O, New Territories, Hong Kong;
- AST Technology Group (HK) Ltd., Flat 6, 20/F, Mega Trade Centre, 1-9 Mei Wan Street, Tsuen Wan, Hong Kong; *and* Unit 2209, 22/F, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong; *and* Unit 2103, 21/F, Sino Centre, 582-592 Nathan Road, Mong Kok, Kowloon, Hong Kong;
- CITI Hong Kong Ltd., Unit F, 7/F, Haribest Industry Building, 45-47 Au Pui Wan Street, Fo Tan, New Territories, Hong Kong;
- Foot Electronics Co. Ltd., Unit 2103, 21/F, Sino Centre, 582-592 Nathan Road, Mong Kok, Kowloon, Hong Kong; *and* Rm. 19C, Lockhart Centre, 301-307 Lockhart Road, Wan Chai, Hong Kong;
- Fuiyen Technology Ltd., 6/F, Block H, East Sun Industrial Centre, 16 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Room 1405, Lucky Centre, 165-171 Wan Chai Road, Wan Chai, Hong Kong;
- GA Industry Co. Ltd., Room 1103, Hang Seng Mong Kok Building, 677 Nathan Road, Kowloon, Hong Kong;
- Global Sourcing Electronics (HK) Ltd., Unit 4, 7/F, Bright Way Tower, No. 33 Mong Kok Road, Mong Kok, Kowloon, Hong Kong;
- GS Technology Ltd, a.k.a. GS Technology Group Ltd., Flat 6, 20/F, Mega Trade Centre, 1-9 Mei Wan Street, Tsuen Wan, New Territories, Hong Kong; *and* Unit D, 16/F, Cheuk Nang Plaza, 250 Hennessy Road, Wanchai, Hong Kong;
- Hi-Shine Technology (HK) Limited, Flat D12, 11/F, King Yip Factory Bldg, 59 King Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Room 603, 6/F, Hang Pont Commercial Building, 31 Tonking Street, Cheung Sha Wan, Kowloon, Hong Kong;
- Hong Kong U.Star Electronics Technology Co., Ltd., Room 28, 8/F, Shing Yip Industrial Building, 19-21 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Unit 5, 27/F, Richmong Commercial Building, 109 Argyle Street, Mong Kok, Kowloon, Hong Kong; *and* Room 704, 7/F, Bright Way Tower, 33 Mong Kok Road, Mong Kog, Kowloon, Hong Kong;
- Hua Fu Technology Co. Ltd., Rm 1209, 12/F, Workingbond Commercial Centre, 162 Prince Edward Road West, Mong Kok, Kowloon, Hong Kong;
- Microlink Communication Ltd., Room 806, 8/F, Kenbo Commercial Building, No. 335-339 Queen's Road West, Hong Kong;
- Miletronic Communication Ltd., Room 2912, Tower 2, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong;
- Newplus Equipment Ltd., 12/F, Chinachem Johnston Plaza, 178-186 Johnston Road, Wan Chai, Hong Kong;
- People Tele-com Group, Flat A, 11/F, Adolfo Mansion, 114-116 Austin Road, Tsim Sha Tsui, Kowloon, Hong Kong;
- Runtop Circuits Technology Co., Room D9, 67/F, Block 2, Camel Paint Building, 62 Hoi Yuen Road, Kwun Tong, Hong Kong; *and* Flat 8-11, 16/F, New Trend Centre, 704 Prince Edward Road East, San Po Kong, Kowloon, Hong Kong;
- Team Kingdom Limited, Unit 526, 5/F, Advanced Technology Centre, 2 Choi Fat Street, Sheung Shui, New Territories, Hong Kong;
- Tianao Electronics Limited, Rm 9, 7/F, Block G, East Sun Industrial Ctr, 16 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong;
- Top-Rank Int Trade (HK), Room 201-202, Westin Centre, 26 Hung To Road, Kwun Tong, Hong Kong; *and*

- Units A&B, 15/F, Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong;
- Vessel Technology Limited, Rm 2309, 23/F, Ho King Comm Ctr, 2-16 Fayuen St., Mongkok, Kowloon, Hong Kong;
- Win Electronics Limited, G/F, 26 Pau Chung Street, Tokwawan, Kowloon, Hong Kong; *and* Rm 2309, 23/F, Ho King Comm Ctr, 2-16 Fayuen St., Mongkok, Kowloon, Hong Kong;
- Win-Semi International Ltd, Flat 6, 20/F, Mega Trade Centre, 1-9 Mei Wan Street, Tsuen Wan, Hong Kong; *and* Unit 503, 5/F, Silvercord Tower 2, 30 Canton Road, Tsimshatsui, Hong Kong;

Indonesia

- PetroChina International Jabung Ltd., Menara Kuningan, 25th Floor, JL. HR Rusuna, Said Block X-7, Kav. 5, Jakarta, Indonesia; *and*

United Arab Emirates

- Chepstow FZE, Office No. 12, Y Block, P.O. Box 121227, Sharjah Airport International Free Zone, Sharjah, UAE.

Savings Clause

Shipments removed from license exception eligibility or that are now subject to requirements in § 744.15 of the EAR as a result of this regulatory action; and on the dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on October 9, 2020, pursuant to actual orders, may proceed to that UVL-listed person under the previous license exception eligibility or without a license so long as the items have been exported from the United States, reexported or transferred (in-country) before November 9, 2020. Any such items not actually exported, reexported or transferred (in-country) before midnight on November 9, 2020 are subject to the requirements in § 744.15 of the EAR in accordance with this regulation.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801 through 4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Pursuant to Section 1762 of the Export Control Reform Act of 2018 (title XVII, subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088, 0694–0122, 0694–0134, and 0694–0137. Collection 0694–0088 includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours.

This rule will not change public burden in a collection of information approved by OMB under control number 0694–0088. The restoration of license exceptions for listed persons on the Unverified List will result in decreased license applications being submitted to BIS by exporters. The removal of license exceptions for listed

persons on the Unverified List will potentially result in increased license applications being submitted to BIS by exporters. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected not to change, as the restoration of some license exceptions and the restriction of other license exceptions will only affect transactions involving persons removed from or added to the Unverified List and not all export transactions. Because license exception eligibility is restored for these entities removed from the UVL, this rule increases public burden in a collection of information approved by OMB under control number 0694–0137 minimally, as this will only affect specifically listed individual persons. Additionally, because license exceptions are restricted for the entities added to the UVL, this rule decreases public burden in a collection of information approved by OMB under control number 0694–0137 minimally, as this will only affect specifically listed individual persons. The decreased burden under 0694–0088 is reciprocal to the increased burden under 0694–0137, and results in little or no change of burden to the public. This rule also decreases public burden in a collection of information under OMB control number 0694–0122, as a result of the exchange of UVL statements between private parties, and under OMB control number 0694–0134, as a result of appeals from persons listed on the UVL for removal of their listing. The total change in burden hours associated with both of these collections is expected to be minimal, as it involves a limited number of persons listed on the UVL.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001

Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2019, 84 FR 61817, 3 CFR, 2019 Comp., p. 479.

- 2. Supplement No. 6 to Part 744 is amended in the table by:
 - a. Adding three entries, in alphabetical order, for “Armenia”;
 - b. Adding one entry, in alphabetical order, for “China”;
 - c. Removing the entry for “Aisin Nantong Technical Center” under “China”;
 - d. Removing the entry for “Beijing Institute of Nanoenergy and Nanosystems” under “China”;
 - e. Removing the entry for “Changchun Institute of Applied Chemistry, Chinese Academy of Sciences” under “China”;
 - f. Removing the entry for “Institute of Geology, Chinese Academy of Geological Sciences” under “China”;
 - g. Removing the entry for “Ningbo Zhongxian Optoelectronic Technology Co, Ltd.” under “China”;
 - h. Removing the entry for “Renmin University” under “China”;
 - i. Removing the entry for “Shanghai Institute of Technical Physics” under “China”;
 - j. Removing the entry for “Shanghai SKEQI Automation Engineering Co.” under “China”;
 - k. Removing the entry for “Shi Jia Zhuang Suin Instruments” under “China”;
 - l. Removing the entry for “Termei Torch & Tip Company” under “China”;
 - m. Removing the entry for “Tongji University” under “China”;
 - n. Removing the entry for “Xi’an Caijing Opto-Electronics, Science & Technology Co., Ltd” under “China”;
 - o. Removing the entry for “Xi’an Micromach Photon Manufacture Technology” under “China”;
 - p. Removing the entry for “Xi’an Jiaotong University, School of Electrical Engineering” under “China”;
 - q. Removing the entry for “Xi’an Jiaotong University” under “China”;
 - r. Removing the entry for “Yunnan Observatories, Chinese Academy of Sciences (CAS)” under “China”;
 - s. Adding two entries, in alphabetical order, for “Finland”;
 - t. Adding three entries, in alphabetical order, for “Germany”;
 - u. Adding five entries, in alphabetical order, for “Hong Kong”.
 - v. Removing the entry for “Advent International Limited” under “Hong Kong”;
 - w. Removing the entry for “AST Technology Group (HK) Ltd.” under “Hong Kong”;
 - x. Removing the entry for “CITI Hong Kong Ltd.” under “Hong Kong”;

- y. Removing the entry for “Foot Electronics Co. Ltd.” under “Hong Kong”;
- z. Removing the entry for “Fuiyen Technology Ltd.” under “Hong Kong”;
- aa. Removing the entry for “GA Industry Co. Ltd.” under “Hong Kong”;
- bb. Removing the entry for “Global Sourcing Electronics (HK) Ltd.” under “Hong Kong”;
- cc. Removing the entry for “GS Technology Ltd., a.k.a. GS Technology Group Ltd.” under “Hong Kong”;
- dd. Removing the entry for “Hi-Shine Technology (HK) Limited” under “Hong Kong”;
- ee. Removing the entry for “Hong Kong U.Star Electronics Technology Co., Ltd.” under “Hong Kong”;
- ff. Removing the entry for “Hua Fu Technology Co. Ltd.” under “Hong Kong”;
- gg. Removing the entry for “Microlink Communication Ltd.” under “Hong Kong”;

- hh. Removing the entry for “Miletronic Communication Ltd.” under “Hong Kong”;
- ii. Removing the entry for “Newplus Equipment Ltd.” under “Hong Kong”;
- jj. Removing the entry for “People Tele-com Group” under “Hong Kong”;
- kk. Removing the entry for “Runtop Circuits Technology Co.” under “Hong Kong”;
- ll. Removing the entry for “Team Kingdom Limited” under “Hong Kong”;
- mm. Removing the entry for “Tianao Electronics Limited” under “Hong Kong”;
- nn. Removing the entry for “Top-Rank Int Trade (HK)” under “Hong Kong”;
- oo. Removing the entry for “Vessel Technology Limited” under “Hong Kong”;
- pp. Removing the entry for “Win Electronics Limited” under “Hong Kong”;
- qq. Removing the entry for “Win-Semi International Ltd” under “Hong Kong”;

- rr. Removing the entry for “Indonesia” and “PetroChina International Jabung Ltd.” under “Indonesia”;
 - ss. Adding one entry, in alphabetical order, for “Mexico”;
 - tt. Adding three entries, in alphabetical order, for “Pakistan”;
 - uu. Adding two entries, in alphabetical order, for “Turkey”;
 - vv. Adding six entries, in alphabetical order, for “United Arab Emirates”; and
 - ww. Removing the entry for “Chepstow FZE” under “United Arab Emirates”.
- The additions and revisions read as follows:

**Supplement No. 6 to Part 744—
Unverified List**

* * * * *

Country	Listed person and address	Federal Register citation and date of publication
ARMENIA	Atlas Sanatgaran, Komitas 26/114, Yerevan, Armenia	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Iranian & Armenian, Komitas 26/114, Yerevan, Armenia	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Piricas Trading Company, No. 20 Heratsi 2A, Yerevan, Armenia	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
* * *	* * *	* * *
CHINA	Sun Yat-Sen University, No. 135 Xingang, Xi Road, Guangzhou, China	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
* * *	* * *	* * *
FINLAND	Aelcomp OY, Kurkisuontie 2B, Helsinki 00904 Finland; and Merisotilaankatu 2, Helsinki 00160 Finland.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Intertranslog OY, Tupatallinkatu 3, Lappeenranta 53300 Finland; and Harapaisentie 55, Lappeenranta 53301 Finland.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
* * *	* * *	* * *
GERMANY	DMA Logistics GmbH, Max Planck-Strasse 1, Unna, Germany	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Halm Elektronik GmbH, Burgstrasse 106, Frankfurt am Main, Germany	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Universal Logistics Systems GmbH Cargo City Sud, Building 577, Frankfurt Airport, Frankfurt am Main, Germany.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
HONG KONG	AW Industrial Ltd., Room A, 3/F Hung Fook Industrial Building, No 60 Hung To Road, Kwun Tong, Kowloon, Hong Kong; and D1 6/F Kras Asia Industrial Building, No 79 Hung To Road, Kwung Tong, Hong Kong.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
* * *	* * *	* * *
	Emax Technology Co. Ltd. HK, Room 19C, Lockhart Centre, 301–307 Lockhart Road, Wan Chai, Hong Kong; and Rm 2017, Lippo Centre Tower 2, 89 Queensway, Admiralty, Hong Kong.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Fortune International Trading, Room 1701(017) 17/F Henan Bldg, No. 90 Jaffee Rd, Wanchai, Hong Kong; and Room 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
* * *	* * *	* * *
	Kenwoo International Trade Company, 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong; and Room 517, New City Centre, 2 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong; and Flat H, 6/F, Block 2, Golden Dragon Industrial Centre, Tai Lin Pai Road, Kwai Chung, Hong Kong.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.

Country	Listed person and address	Federal Register citation and date of publication
*	Xiang Cheng Gao Trading (HK) Ltd., 1215 Lot, DD 125, Ha Tsuen Road, Ha Tsuen, Ping Shan, Yuen Long, New Territories, Hong Kong.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
MEXICO	Integrated Production and Test Engineering, a.k.a. IPTE, Calle Alambiques 975—9, Parque Industrial el Álamo, Guadalajara, Jalisco 44490, Mexico.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
PAKISTAN	ENGRO Polymer & Chemicals Limited, The Harbour Front, HC-3, Dolmen City, 16th Floor, Block-4, Scheme-5, Clifton, Karachi, Pakistan.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Naina Exporters and Importers, H-96, Intelligence School Colony, M.T. Khan Road, Karachi, Pakistan.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Seven Star Company, H-96 Intelligence School Colony, M.T. Khan Road, Karachi, Pakistan.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
TURKEY	Fast Aviation, Yesilkoy MAH Ataturk, Cad. EGS Blokleri, B:2 No:2 D:1, Istanbul, Turkey.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
	Metafor Lojistik, Ma. Istiklal Cad. Beyoglu, Istanbul, Turkey	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
UNITED ARAB EMIRATES.	Aero King FZC, Flat #501, Al Masjid Bldg No 416, Al Nahda, Sharjah, UAE; and Al Khabaisa Area, Salahuddin Street, Deira, UAE; and B04-518 Business Center 03, RAKEZ Business Zone-FZ, RAK, UAE; and Room #518, Business Center 3, Business Park Nakheel, Ras Al Khaimah, UAE.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
*	Elemental Lab, PO Box 172237, Dubai UAE; and Gargash Ctr near Babkha Sub, Gargashe 7 Flr Ofc Num 703, Dubai, UAE; and 701 Benyas Building, Benyas Square, Dubai, UAE; and 701, Baniyas Building, Baniyas Square, Dubai, UAE.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
*	Lavender General Trading, Plot# MO0706, Street N200, JAFZA North, Dubai, UAE; and 732C Street, Plot# MO0543A, Gate 5, JAFZA, Dubai, UAE; and Warehouse 9, Industrial Area 11, Sharjah, UAE; and Office No. 123, 1st Floor, Dubai Real Estate Bldg., Dubai Maritime City, Dubai, UAE.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
*	Piricas Trading Company, No. 507 Al Mina Street, P.O. Box 181950, Dubai, UAE	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
*	Rising Sun FZE, BC 1300147, Ajman Freezone, Ajman, UAE; and G08, Block G1, Dubai Airport Free Zone Area (DAFZA), Dubai, UAE.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.
*	Sea Prince Logistics LLC, Plot# MO0706, Street N200, JAFZA North, Dubai, UAE; and 732C Street, Plot# MO0543A, Gate 5, JAFZA, Dubai, UAE; and Warehouse 9, Industrial Area 11, Sharjah, UAE; and Office No. 123, 1st Floor, Dubai Real Estate Bldg., Dubai Maritime City, Dubai, UAE.	85 FR [INSERT FEDERAL REGISTER PAGE NUMBER], 10/9/2020.

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020-20012 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 20–16]

RIN 1515–AE58

Import Restrictions Imposed on Archaeological Material From Chile

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from the Republic of Chile (Chile). These restrictions are being imposed pursuant to an agreement between the United States and Chile that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends the CBP regulations by adding Chile to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. The final rule also contains the Designated List that describes the types of archaeological material to which the restrictions apply.

DATES: Effective on October 7, 2020.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, ot-otrrculturalproperty@cbp.dhs.gov. For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2942, CTAC@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, “the Cultural Property Implementation Act”) implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, “the Convention” (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation

Act, the United States entered into a bilateral agreement with Chile to impose import restrictions on certain Chilean archaeological material. This rule announces that the United States is now imposing import restrictions on certain archaeological material from Chile.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On June 12, 2019, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological material originating in Chile that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Chile is in jeopardy from the pillage of archaeological material representing Chile’s cultural heritage dating from approximately 31,000 B.C. to 250 years before the signing of the Agreement; (2) that the Chilean government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

The Agreement

On May 7, 2020, the United States and Chile signed a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of Chile Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Chile” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement enters into force on September 30, 2020, and enables the promulgation of import

restrictions on categories of archaeological material representing Chile’s cultural heritage ranging in date from the Paleoindian period (approximately 31,000–8000 B.C.) to the Huri Moai phase in Chile (A.D. 1680–1868). A list of the categories of archaeological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP Regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on September 30, 2025, unless extended.

Designated List of Archaeological Material of Chile

The Agreement between the United States and Chile includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Chile legally and not in violation of the export laws of Chile.

The Designated List includes archaeological material in stone, metal, ceramic, and organic tissue ranging in date from approximately 31,000 B.C. to 1868 A.D.

Archaeological Material

Approximate chronology of well-known archaeological sites, traditions, and cultures: Archaeological material covered by the Agreement is associated with the diverse cultural groups that resided in Chile’s five cultural zones on the mainland: the Arid North, the Semi-arid North, Central Chile, Southern Chile, and the Far South; and on Rapa

Nui (formerly Easter Island) in Polynesia.

The Arid North, the Semi-Arid North, Central Chile, and Southern Chile

Prehistoric archaeological material from the Arid North, the Semi-arid North, Central Chile, and Southern Chile dates from the earliest human presence, currently dated to approximately 31,000 B.C., to the end of the Arauco war in A.D. 1772.

(a) *Paleoindian period:* Groups of terminal Pleistocene terrestrial hunter-gatherers: Monte Verde and Pilauco (c. 31,000–8000 B.C.); Santa Julia (10,000 B.C.); Quebrada de Mani-12 (11,000–9000 B.C.); Tagua Tagua 1 and 2 (13,500–10,800 B.C.); and Austral hunters (before 10,000 B.C.).

(b) *Early Archaic period:* Groups of land and sea Holocene hunter-gatherers: San Pedro Viejo de Pichasca Tradition (8000 B.C.); Alero Marifilo 1 (10,000–2000 B.C.); Huentelauquén Complex (11,500–8000 B.C.); Piuquenes Cavern (10,076–9373 B.C.); Alero El Manzano (10,140–8564 B.C.).

(c) *Middle Archaic period:* Chinchorro (8500–2000 B.C.); Talcahuense coastal hunter-gatherers (4500–2000 B.C.); Papudo and Morrillos Complex (7000–3000 B.C.); Cuchipuy site (7291–6643 B.C.); El Manzano 3, La Batea 1 and Tagua Tagua 2 sites (7000–3000 B.C.).

(d) *Late Archaic period:* Caleta Huelén-42 (4780–3780 B.C.); Caramucho-3 (4030 B.C.); Alero Punta Colorada (3,000–1 B.C.); and Guanaqueros Complex (3000 B.C.).

(e) *Early Pottery period:* Alto Ramírez and Faldas del Morro Phases (500 B.C.–A.D. 200); El Molle Culture (300 B.C.–A.D. 800); Caleta Huelén-7, 10, 20 and 43 (450 B.C.–A.D. 820); Guatacondo-1 (900 B.C.–A.D. 200); Ramaditas (900 B.C.–A.D. 200); Pitren Complex (A.D. 350–1000); Llolleo Complex (A.D. 200–1200); and Bato Groups (A.D. 200–1200).

(f) *Middle Pottery period:* Tiwanaku-influenced cultures (A.D. 600–1000); Caserones-1 (350 B.C.–A.D. 900); and San Pedro de Atacama Culture (500 B.C.–A.D. 1470).

(g) *Late Intermediate Pottery period:* Arica Culture (A.D. 1000–1450); Pica-Tarapacá Complex (A.D. 900–1450); Camiña (A.D. 1200–1400); Diaguita Culture (A.D. 1200–1536); and Aconcagua Cultural Complex (A.D. 900–1470).

(h) *Late Pottery period:* Inka-influenced cultures (A.D. 1200–1450); El Vergel Complex (A.D. 1000–1550); and Valdivia Ceramics (A.D. 1400–1800).

The Far South

Archaeological material in the Far South is associated with hunter-gatherers living in the region from the beginning of the Holocene through the 19th century A.D.

(a) *Early Holocene:* Hunter-gatherers sites of El Chueco 1, Baño Nuevo 1, Fell, and Pali Aike sites (10,000–8000 B.C.).

(b) *Middle Holocene:* Hunter-gatherers from the Fell III cultural tradition (8000–5000 B.C.); early Austral canoe nomads Englefield tradition (6500–5000 B.C.); Northern canoe nomads (6000–5000 B.C.).

(c) *Late Holocene:* Austral hunter-gatherers and canoe nomads (5,000 B.C.–A.D. 19th century).

Rapa Nui

Archaeological material from Rapa Nui dates from the earliest settlers around A.D. 400 to 1868.

(a) *Ahu Moroki phase:* Rapa Nui Culture (A.D. 400–1100).

(b) *Ahu Moai phase:* Rapa Nui Culture (A.D. 1100–1680).

(c) *Huri Moai phase:* Rapa Nui Culture (A.D. 1680–1868).

Categories of Archaeological Material

- I. Stone
- II. Ceramic
- III. Metal
- IV. Human remains
- V. Textiles
- VI. Wood
- VII. Bone, shell and other organic matter

I. Stone

Stone tools marked the arrival of the first people to each region of Chile and continued to be used throughout history. Examples of archaeological stone material covered in the Agreement include the following objects.

A. *Chipped stone tools*—Projectile points and tools for scraping, cutting, or perforating are made primarily from quartz crystal, quartz, basalt, silicate, and obsidian. Stone tools from the Arid North may be attached to wooden handles. A *mata'a* is a multifunctional Rapa Nui obsidian biface with a stem about 10 cm long.

B. *Hoes, axes, and shovels*—Rough and unpolished medium-sized hoes, axes, and shovels first appeared in the Early Pottery period and continued to be used throughout the Arid North, the Semi-arid North, Central Chile, and Southern Chile. In Rapa Nui, basalt or obsidian chisels (*toki*) are carved or polished bifaces in rectangular, trapezoidal, cylindrical, or irregular shapes with a pointed end. Dimensions range from 5 cm to 25 cm.

C. *Bolas (boleadoras)*—Round, oval, or pear-shaped stone balls have an

equatorial groove where a string was tied.

D. *Pestles and mortars*—A pestle is a hand-held stone used with a bottom mortar stone to grind grains. Late Archaic period conical hollowed pestles were used with flat grinding stones. Llolleo Culture long and rounded pestles were used with concave mortars with a defined grinding channel. Female figure Pre-Mapuche stone mortars have a cavity in the abdomen.

E. *Cup-marked stones*—Large granite stones with one to dozens of carved cylindrical or oval cavities about 20 cm deep are associated with several cultures including the Papudo and Morrillos Complex.

F. *Perforated stones and spindle whorls (torteras)*—Perforated stones are cylindrical, spherical, or ovoid stones perforated through the center. Spindle whorls are smaller stones of similar shape used to spin yarn. Diaguita culture polished stone spindle whorls are shaped like double axes.

G. *Stone pipes*—Carved and polished stone pipes are for consuming hallucinogenic drugs. El Molle, Llolleo, and Pitren culture pipes are T-shaped with small cylindrical bowls and two lateral tubular extensions, one with a closed end and one with an open end. Bowls sometimes have mamiform decorations. Mapuche culture pipes and their predecessors (*kitras*) have cylindrical bodies with a small bowl in the center and short stem or are anthropomorphic with the bowl in the torso and stem at the foot. Pipes may also have zoomorphic shapes.

H. *Fishing tools*—Weights for fishing lines, hooks, harpoon heads, and shellfish hooks from northern and central coastal archaeological sites are made from stone. Austral canoe nomad fishing line weights are made from coarse-grained pebbles with notches or grooves. Rapa Nui hooks are 3–10 cm long and made from black basalt, sometimes mixed with bone. They are elongated and curved with a semi-flat section and a pointed edge; the shaft is longer than the stem.

I. *Geometric stones*—Early Archaic period geometric stones associated with Huentelauquén and San Pedro Viejo de Pichasca Complexes are igneous stone or granite carved and polished into circles, triangles, rectangles, and polygons. The stones are sometimes covered with red, orange, gray, or black pigment. Rapa Nui geometric stones are manufactured mainly from basalt.

J. *Toqui mano*—Llolleo and Mapuche style toqui manos are cylindrical polished stone objects with a flat and beveled distal end, similar in shape to

an axe head. Some have vertical incisions along the edge of the blade.

K. *Beads*—Necklaces and bracelets are often made of stone beads. Beads from the Arid and Semi-arid North are made from malachite, white quartz, silicate, and obsidian beginning in the Early Pottery period. Llolleo culture discoidal basalt beads (0.3 to 0.7 cm in diameter) are often mixed with malachite and greenish apatite tubular beads (about 0.5 cm long and 0.4 cm in diameter).

L. *Labrets (tembetás)*—Tembetás are stone ornaments worn in a perforation of the lower lip. They may be discoidal with wings, cylindrical with wings, or conical with wings. Some are fusiform in shape, including straight or curved bottle-shapes. Diaguita culture tembetás are button-shaped with small wings. Tembetás are also associated with the Llolleo culture and Bato groups.

M. *Moai*—Moai are Rapa Nui anthropomorphic figures carved in basalt, lapilli tuff, trachyte, or red scoria. Dimensions range from 30 cm to several meters in height. Some have high or low relief petroglyphs or incisions on the back and front of the figure.

N. *Rock art*—Rock art includes petroglyphs (engravings) and pictographs (paintings) that may have been removed from large boulders or outcrops. Rock art from the Arid North and Semi-arid North depicts humans, camelids, felines, snakes, lizards, spiders, sea mammals, fish, turtles, other animal figures, and geometric motifs. Cave art in the Far South includes geometric figures, handprints, and camelids painted in red, black, and ochre pigments.

O. *Other polished stone objects*—Late Pottery period cultures, including those with Inka influence, made anthropomorphic and zoomorphic figures (llamas, condors, snakes, etc.). Diaguita and Aconcagua style stone panpipes (*antaras*) are musical instruments consisting of multiple tubes. Mapuche and pre-Mapuche pendants from Central Chile are shaped like axe heads with a drilled hole to suspend the ornament. Mapuche scepters (*clavas*) are polished stone objects with a handle and head in the shape of a bird.

II. Ceramic

The earliest-known pottery in Chile dates to about 3,000 years ago. Potters in the Arid North, Semi-arid North, Central Chile, and Southern Chile created vessels, body ornaments, pipes, and other utilitarian and ceremonial items. Cultures in the Far South and Rapa Nui did not manufacture ceramics. Examples of archaeological ceramics

covered in the Agreement include the following objects.

Ceramics of the Arid North

A. *Early undecorated pottery*—includes Faldas de Morro style large jars with restricted necks (on average 26 cm tall and 18 cm in diameter); small, shallow undecorated bowls about 4 cm tall; and large, deep undecorated bowls about 10 cm tall. Alto Ramirez style globular jars are undecorated.

B. *San Pedro de Atacama style*—polished black, dark brown, or red pottery may be decorated with modeled faces or geometric patterns of incised lines. Forms include bowls about 10 cm tall; anthropomorphic bottles about 18 cm tall; and tall, narrow jars with straight walls and flat bases about 12 cm tall.

C. *Tiwanaku-influenced pottery*—includes Cabuza-style lightly polished red ware decorated with black, or sometimes white, painted bands of lines, triangles, and wavy lines. Forms include jars with one handle, bowls, and *keros* (beakers). Imported fine polychrome Tiwanaku ceramics include jars, bowls, and *keros* with geometric, zoomorphic, or anthropomorphic painted or modeled decorations.

D. *Maytas-Chiribaya style pottery*—includes bowls, jars with one handle, and *cántaros* (very large jars with small necks) decorated with elaborate geometric designs in white, black, and red paint on red slip, often arranged into bands.

E. *Arica culture ceramics*—include San Miguel style large globular jars with narrow necks, *keros*, and smaller jars with one handle with white slip and black and red painted geometric figures, zigzag lines, and spirals. Pocoma-Gentilar style polished unslipped jars, *cántaros*, and cups have black, white, and red painted geometric figures, crosses, anthropomorphic designs, and zoomorphic designs on orange or white surfaces.

F. *Inka-influenced ceramics*—include locally produced Inka style jars that are monochrome polished red or orange or have painted black and red geometric designs. Imported Saxamar or Inka Pacajes pottery includes polished red ware plates and shallow bowls with fine lines, dots, or small llamas painted on the interior. Imported Inka polychrome pottery includes plates and jars with black, red, white, and cream painted geometric decorations.

Ceramics of the Semi-Arid North

G. *Early pottery*—includes El Molle style ceramics such as polished red, brown, and black cups, bottles, and jars with modeled decorations on the

handles including animals and cultivated plants. Some cups are shaped like anthropomorphic kneeling figures. Some vessels are decorated with finely incised zones created by parallel lines, steps, and zigzags or with white, red and black paint. Some vessels have a metallic appearance created by applying pulverized hematite to the surface. Other Early ceramics include rough or polished red, black, or gray undecorated vessels. Styles include Loa, Quillagua, and Caleta Huelén.

H. *Pica-Tarapacá Complex ceramics*—include upright bottles, sometimes in anthropomorphic or zoomorphic shapes; bottles shaped like reclining anthropomorphic or zoomorphic figures; and asymmetrical or boot-shaped jars. Pottery is smoothed or polished red or black.

I. *Late Intermediate Pottery period*—Altiplano black-on-red ceramics are decorated with black paint over red slip creating lines, wavy lines, and steps on the outside of jars and bottles and inside of bowls. Styles include Isluga Black-on-Red and Chilpe Black-on-Red.

J. *Diaguita style pottery*—includes bowls with straight walls and round bases, often with modeled faces; bell-shaped bowls; anthropomorphic jars; boot-shaped jars with excised decoration; boot-shaped anthropomorphic or zoomorphic jars; and duck-shaped vessels. Red, white, and black painted designs on the exterior of finely burnished vessels include bell-shapes, rhombuses, crosses, felines, dots, and crosshatching, often organized into four equal segments.

K. *Diaguita pottery with Inka influence*—mixes Diaguita and Inka forms and designs. For example, Diaguita style straight-walled bowls are decorated on the interior with Inka motifs; Inka style bird-shaped plates have Diaguita decoration, sometimes divided into four sections; Inka style aríbalos have white slip and Diaguita decoration; and duck-shaped vessels painted with Inka designs. Some pottery closely imitates Cusco forms and designs, including flat or bird-shaped plates and aríbalos decorated with checkered patterns, hourglasses, double crosses, zoomorphic designs, and abstract plant motifs. Imported Inka polychrome pottery includes plates and jars with black, red, white, and cream painted geometric decorations.

Ceramics of Central Chile

L. *Early pottery*—includes smoothed or polished black or dark brown Bato and Llolleo style bridge-handle vessels, long-neck jars, and vessels shaped like squashes. Anthropomorphic jars are monochrome polished vessels with a

thick strap handle connecting the neck to a molded human head with coffee bean eyes and prominent eyebrows and noses in a T-shape. Small, fine jars are decorated with wavy lines of hematite paint alternating with red areas. T-shaped ceramic pipes, ear plugs, and discoidal lip ornaments with wings (*tembetás*) were also made from ceramic.

M. *Aconcagua style pottery*—includes semispherical bowls and globular cups decorated with black painted lines on orange clay forming geometric decorations, zigzags, straight lines, triangles with *pestañas*, and *trinacrio* motifs.

Ceramics of Southern Chile

N. *Pitrén style pottery*—includes a wide variety of forms ranging from simple globular bottles to strap-handle jars in the form of animals, plants, or humans. *Ketru metawe* are asymmetrical or duck-shaped jars. Most vessels are monochrome brown or red. Some have modeled decorations, incision, or negative paint. Ceramic pipes are T-shaped and 3–5 cm long.

O. *Late red-on-white pottery, including pre-Hispanic El Vergel and Colonial period Valdivia styles*—includes large open vessels used as funerary urns and *ketru metawe*. Vessels may be monochrome red or decorated with red, and sometimes black, paint over white slip creating geometric designs. Other forms include jars, bottles, plates, bowls, cups, mugs with handles, and urns. Common designs include triangles filled with parallel lines, horizontal bands of chevrons, bands of nested zigzags, vertical bands of crosshatching and diamonds, and hourglasses.

P. *Mapuche style pottery*—includes jars with one handle (*metawe*), plates, bottles, pots (*challa*), bowls, large bowls, and mugs. Pottery is typically coarse and may be monochrome black, brown, or red-slipped. Asymmetrical jars are frequently painted with red or black geometric designs on white slip. Painted designs may be in two horizontal bands of opposing triangles. Some jars are duck-shaped. Later forms include dogs, horses, and pigs.

III. Metal

Cultures in the Arid North, the Semi-arid North, Central Chile, and Southern Chile developed metallurgy and manufactured artifacts in copper, silver, and gold. There is no record of metallurgy among cultures in the Far South or Rapa Nui. Most metal artifacts from Chile were used for ritual and personal adornment. Examples of archaeological metal objects covered in

the Agreement include the following objects.

A. *Personal ornaments*—Several cultures made metal earrings and rings from copper (El Molle, San Pedro de Atacama, Llolleo, Aconcagua, Pitrén, El Vergel), gold (Arica, Tiwanaku, Inka, San Pedro de Atacama), or silver (Arica, Inka, San Pedro de Atacama). Notable types include Diaguita earrings that may have quadrangular or spiral shaped bodies and/or stone or metal appendices. San Pedro de Atacama rings may be made from smooth laminar sheets or wires. Some rings have appendices or heads. Other San Pedro de Atacama ornaments include metal plaques, small bells, gold and silver disks, imitation feathers, diadems, headbands, ear plugs, and bracelets. Diaguita and El Vergel bracelets are made from copper. Arica and Aconcagua cultures made copper hooks. Arica and San Pedro de Atacama cultures made ornamental clothing pins (*tupus*). Mapuche *tupus* were made from copper and silver.

B. *Domestic and ceremonial tools*—Functional metal axes are associated with Diaguita and San Pedro de Atacama cultures. Inka and Inka-influenced Diaguita *tumis* are ceremonial axes with a long handle and a semicircular or rectilinear blade. San Pedro, Diaguita, and Inka copper chisels are long copper tools with quadrangular cross-sections that are beveled on one end. San Pedro de Atacama mace heads are ellipsoidal. Inka copper or bronze mace heads are star-shaped. Metal tools from the Arid North may be attached to wooden handles. San Pedro de Atacama and Inka tweezers are made from copper or copper alloy. San Pedro de Atacama culture also made circular or ovoid punches. Knuckles (*manoplas*) are fist-sized semicircular tools with a pointed protrusion that may have been used to tighten bowstrings or as “brass knuckles.”

C. *Vessels*—Gold or silver San Pedro de Atacama style cups with embossed decorations include gold *keros* with Tiwanaku designs and portrait vessels. Inka and Diaguita cultures made copper plates.

D. *Psychotropic paraphernalia*—San Pedro de Atacama culture snuff tubes are wrapped with tape-like strips of gold and/or silver with ends made of gold. The distal end may have a Tiwanaku design such as a camelid head. The Diaguita culture used copper snuff spoons.

E. *Figurines*—Small Inka style figurines depict male, female, and animal figures in solid gold or silver. Diaguita figurines were made from copper.

IV. Human Remains

Preservation of human remains, including through mummification, is common in the Arid North due to the dry desert climate. In contrast, very few human remains preserve in the Far South or Rapa Nui, with the exception of manufactured items that incorporate human skeletal elements. Examples of archaeological human remains covered in the Agreement include the following objects.

A. *Naturally mummified human remains*—Early Archaic period mummified human remains from the Arid North are in extended positions on mats. Late Archaic period mummified human remains are in flexed positions. Early Pottery period mummified human bodies in flexed positions wear wool clothing and are placed on mats. Middle to late Pottery period mummy bundles contain flexed mummified human remains wrapped in layers of basketry and textiles.

B. *Artificially mummified human remains*—Chinchorro culture mummified human remains have wood and plant fibers replacing removed bones and organs. Red or black clay covers the faces and extended bodies. Their wigs are made of human hair.

C. *Tools and jewelry*—Rapa Nui culture needles, pendants, beads, punches and hooks are made from human skeletal remains.

D. *Incised skulls*—Rapa Nui culture incised skulls have incised designs in the frontal or parietal bone. Incised designs may be filled with yellow or red pigment.

V. Textiles

Most archaeological textiles are from the Arid North and Semi-arid North where dry conditions lead to excellent preservation. The earliest preserved textiles are from the Early Pottery period in the Arid North. Clothing and items for domestic use are made from camelid wool and cotton. Examples of archaeological textiles covered in the Agreement include the following objects.

A. *Tunics, shirts, shawls, and girdles*—Early Pottery period clothing from the Arid North includes shawls and shirts woven on looms from thick woolen fibers. The tunic (*unku*) is a sleeveless male garment that sometimes reaches to the knees. Early Pottery period tunics are often decorated with polychrome vertical lines in natural colors and/or embroidery on the edges of collars and sleeves. Alto Ramirez culture tunics and girdles made from polychrome and figurative tapestries stand out. Middle Pottery period Cabuza

and Tiwanaku textiles include wool tunics, shirts, girdles, and other garments made predominantly of green, blue, and red fibers with complex geometric designs made with techniques of weft-faced weave, floating warp, and embroidered finishes. In the Late Pottery period, cotton fibers are introduced along with new decorative techniques such as tie-dye, tapestry, and feather applications. Atacama tradition plain or striped tunics are warp-faced with embroidered edges. Tapestry tunics and bags have red, blue, and white designs including networks of rhombuses, triangles, or squares accompanied by a zoomorphic figure with three fingers resembling a lizard.

B. Hats—Tiwanaku-influenced four-corner hats are monochrome or polychrome with geometric and figurative designs. Varied Middle to Late Pottery period turbans, caps, helmets, and hoods are made from wool, basketry, and leather. Some have attached metal, feather, or wood ornaments. For example, Atacama style crown-type hats were made of braided plant fibers covered by leather strips.

C. Mats and skirts—Mats are made from a series of reeds or branches joined by plant fibers to form a flexible plane in one direction. Chinchorro culture plant fiber skirts (*faldellines*) are made from fibers twisted like strings and tied to a main cord.

D. Bags—Ceremonial bags (*chuspas*) are trapezoidal, square, or rectangular and hang by a string. They are decorated on both sides with thin lines of dyed yarn with woven designs. Belt-bags are long rectangular girdles folded lengthwise to create a bag. They are decorated on one side. Bags and belt-bags have geometric, anthropomorphic, and zoomorphic designs made from yarn dyed dark red, orange, terracotta, purple, ochre, green, and blue. Small square or rectangular domestic-use bags are decorated with thin lines of natural colors. Atacama style bags are made from cut-pile weave similar to velvet and have checkerboard designs. Middle Pottery period Arica culture textiles use fewer decorative techniques and colors, but have increased diversity of anthropomorphic and zoomorphic designs.

E. Panels—Panels (*inkuñas*) are small rectangular textiles about 45 x 50 cm in size. Panels often have weft finishings creating dangling cords that serve as handles. Panels may hold burial bundles, household items, coca leaves, or agricultural products.

F. Khipus—Inka khipus are recording devices made of cotton and wool knotted cords hanging from a central cord.

VI. Wood

Archaeological wooden objects are rare. Few were produced in the Arid North due to a scarcity of raw material. Wood was available in Central Chile, Southern Chile, and the Far South, but environmental conditions in those areas do not favor wood preservation.

Examples of archaeological wooden objects covered in the Agreement include the following objects.

A. Snuff tablets—Snuff tablets are shallow rectangular trays that may be decorated with geometric or zoo-anthropomorphic figures associated with cultures of Northern Chile, San Pedro de Atacama Complex, the Diaguita Culture, and other cultures influenced by the Inka.

B. Keros—Keros are vase-shaped beakers with elaborate carved geometric or zoomorphic designs associated with the Arica Culture, San Pedro de Atacama Complex, Diaguita Culture, and others influenced by Inka culture.

C. Domestic tools—Combs, boxes, spindle shafts, and spindle whorls are made from wood. Mapuche Culture rafts, plates, spoons, spindle whorls, and other items are made from oak, bay laurel, rali, alerce, and coihue.

D. Navigation items—Oars from the Arid North and Semi-arid North are made from wood, and rafts are made from wood and inflated sea lion skins. Dugout canoes (*wampos*) from Central Chile and Southern Chile are carved from a single tree trunk.

VIII. Bone, Ivory, Shell, and Other Organic Material

Preservation of bone, shell, and other organic material is best in the Arid and Semi-arid North. Very little bone or shell has been recovered in the Far South or Rapa Nui. Various artefacts were made for domestic, recreational, decorative, and ritual use. Examples of archaeological objects covered in the Agreement include the following objects.

A. Hooks and harpoons—Middle and Late Archaic period hooks from the Arid North are made from mollusk shells and cactus thorns. Harpoons are made from bone. Rapa Nui culture spear tips and fishhooks are made from bone and shell.

B. Bone and shell tools—Bone tools from the Arid North include awls, punches, pressure flakers, darts, shovels, hoes, and two-headed anthropomorphic bone spindle whorls. Most tools are made from camelid bones. Hoes are made from whale bones. Cutting tools are made from sharpened marine mollusks. Bone awls, spears, and tubes date to the Paleoindian period in Southern Chile. Austral canoe nomad

awls, beads, chisels, pressure flakers, smoothers, and harpoon and spear points with serrated edges are made from terrestrial mammals, marine mammals, and birds. Some harpoons have geometric engravings and occasional animal motifs. Rapa Nui culture needles are made from bird bones.

C. Body ornaments—Earrings from the Arid North are made from shell.

Necklaces and other jewelry are made from bone beads. Austral canoe nomad pendants are made from sea lion canine teeth and engraved albatross bone. Rapa Nui culture ornaments include bone pendants, bone necklaces, tooth beads, small black or white shell beads, medium brown shell beads, and bone ear plugs. Inka shell ornaments are made from *Spondylus princeps*, or *mullu*.

D. Spatulas and snuff tubes—Snuff tubes are small bones that have been hollowed out, polished, and decorated on the exterior. Spatulas have rounded tips for inhaling snuff and are decorated with carved zoomorphic designs.

E. Combs—Middle and Late Pottery period combs are made from cactus thorns joined by interlaced fibers.

F. Gourd containers—Gourd containers have pyro-engraved geometric, anthropomorphic, and zoomorphic designs.

G. Basketry and rope—Early Pottery period basketry includes miniatures and large baskets or plates. Middle and Late Pottery period baskets are medium size. Ropes are made from vegetable fiber.

H. Musical instruments—Panpipes are made of reeds lashed together with cords or carved from a single piece of wood. Rattles are made from gourds and wood with seeds or pebbles inside. *Chajchas* or *cahschas* are camelid hoofs held together with a fabric strap.

I. Moai eyes—The eyes of moai are made from coral and may have either red scoria or black obsidian pupils.

Additional Resources

National Cultural Heritage Service, Chile, digital collections: <https://www.patrimoniocultural.gob.cl/portal/Contenido/Colecciones-digitales/>.

Heritage Assets Documentation Center, Chile, Regional Heritage Thesaurus: <http://www.tesauroregional.cl/linea-de-tiempo>.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective

date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1)

pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding an entry for Chile in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * *		
Chile	Archaeological material representing Chile's cultural heritage from the Paleolithic period (c. 31,000 B.C.) to the Huri Moai phase in Chile (A.D. 1680–1868)..	CBP Dec. 20–16.
* * * * *		

* * * * *

Dated: October 7, 2020.

Mark A. Morgan,

Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2020–22573 Filed 10–7–20; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–6111–C–04]

RIN 2529–AA98

HUD's Implementation of the Fair Housing Act's Disparate Impact Standard; Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule; correction.

SUMMARY: On September 24, 2020, HUD published a final rule amending HUD's disparate impact standard regulation.

This document corrects an incorrect amendatory instruction.

DATES: Effective: October 26, 2020.

FOR FURTHER INFORMATION CONTACT:

With respect to this technical correction, contact Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On September 24, 2020 (85 FR 60288), HUD published a final rule that amended HUD's disparate impact standard regulation and included minor revisions to § 100.70. In the revision of § 100.70, HUD's amendatory instructions in the final rule included an incorrect instruction to add a new paragraph (d)(5). HUD intended, consistent with the proposed rule (84 FR 42854), to revise the already-existing paragraph (d)(5). This document corrects this instruction.

Correction

Accordingly, FR Rule Doc. 2020–19887, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard (FR–6111–F–03), published in the **Federal Register** on September 24, 2020 (85 FR 60288) is corrected as follows:

■ On page 60332, in the last full paragraph of the second column, in amendment 3, the instruction “In § 100.70, add a new paragraph (d)(5) to read as follows:” is corrected to read “In § 100.70, revise paragraph (d)(5) to read as follows:”

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2020–21634 Filed 10–8–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9925]

RIN 1545-BP23

Meals and Entertainment Expenses Under Section 274**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule.

SUMMARY: This document contains final regulations that provide guidance under section 274 of the Internal Revenue Code (Code) regarding certain recent amendments made to that section. Specifically, the final regulations address the elimination of the deduction under section 274 for expenditures related to entertainment, amusement, or recreation activities, and provide guidance to determine whether an activity is of a type generally considered to be entertainment. The final regulations also address the limitation on the deduction of food and beverage expenses under section 274(k) and (n), including the applicability of the exceptions under section 274(e)(2), (3), (4), (7), (8), and (9). The final regulations affect taxpayers who pay or incur expenses for meals or entertainment.

DATES:

Effective Date: These regulations are effective on October 9, 2020.

Applicability Date: These regulations apply for taxable years that begin on or after October 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Patrick Clinton of the Office of the Associate Chief Counsel (Income Tax and Accounting), (202) 317-7005 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains final regulations under section 274 of the Code that amend the Income Tax Regulations (26 CFR part 1). In general, section 274 limits or disallows deductions for certain meal and entertainment expenditures that otherwise would be allowable under chapter 1 of the Code (chapter 1), primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

On December 22, 2017, section 274 was amended by section 13304 of Public Law 115-97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act,

(TCJA) to revise the rules for deducting expenditures for meals and entertainment, effective for amounts paid or incurred after December 31, 2017.

On February 26, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-100814-19) in the *Federal Register* (85 FR 11020) containing proposed regulations under section 274 to implement certain of the TCJA's amendments to section 274 (proposed regulations). The proposed regulations would update existing regulations in § 1.274-2 by adding a new section at § 1.274-11 for entertainment expenditures. The proposed regulations would also add a new section at § 1.274-12 to address the limitations on food or beverage expenses under section 274(k) and (n), including the application of the exceptions in section 274(e)(2), (3), (4), (7), (8), and (9). Pending the issuance of these final regulations, taxpayers were permitted to rely upon the proposed regulations for entertainment and food or beverage expenses, as applicable, paid or incurred after December 31, 2017.

The Treasury Department and the IRS did not receive any requests to speak at a public hearing on the proposed regulations. Therefore, the scheduled public hearing was cancelled. The Treasury Department and the IRS received 14 written and electronic comments in response to the proposed regulations. All comments were considered and are available at <https://www.regulations.gov> or upon request. The comments addressing the proposed regulations are summarized in the Summary of Comments and Explanation of Revisions section. However, comments recommending statutory revisions or addressing issues outside the scope of these final regulations are not discussed in this preamble. After full consideration of the comments, this Treasury decision adopts the proposed regulations with modifications in response to certain comments, as described in the Summary of Comments and Explanation of Revisions section.

1. Business Meals and Entertainment

Section 274(a)(1)(A) generally disallows a deduction for any item with respect to an activity of a type considered to constitute entertainment, amusement, or recreation (entertainment expenditures). However, prior to the amendment by the TCJA, section 274(a)(1)(A) provided exceptions to that disallowance if the taxpayer established that: (1) The item was directly related to the active

conduct of the taxpayer's trade or business (directly related exception); or (2) in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), the item was associated with the active conduct of the taxpayer's trade or business (business discussion exception). Section 274(e)(1) through (9) also provide exceptions to the rule in section 274(a) that disallows a deduction for entertainment expenditures. The TCJA did not change the application of the section 274(e) exceptions to entertainment expenditures.

Section 274(a)(1)(B) disallows a deduction for any item with respect to a facility used in connection with an activity referred to in section 274(a)(1)(A). Section 274(a)(2) provides that, for purposes of applying section 274(a)(1), dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities. Section 274(a)(3) disallows a deduction for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

Prior to amendment by the TCJA, section 274(n)(1) generally limited the deduction of food or beverage expenses and entertainment expenditures to 50 percent of the amount that otherwise would have been allowable. Thus, under prior law, taxpayers could deduct 50 percent of meal expenses, and 50 percent of entertainment expenditures that met the directly related or business discussion exception. Distinguishing between meal expenses and entertainment expenditures was unnecessary for purposes of the 50 percent limitation.

Section 13304(a)(1) of the TCJA repealed the directly related and business discussion exceptions to the general prohibition on deducting entertainment expenditures in section 274(a)(1)(A). Also, section 13304(a)(2)(D) of the TCJA amended the 50 percent limitation in section 274(n)(1) to remove the reference to entertainment expenditures. Thus, entertainment expenditures are no longer deductible unless one of the nine exceptions to section 274(a) in section 274(e) applies.

While the TCJA eliminated the deduction for entertainment expenses, Congress did not amend the provisions relating to the deductibility of business meals. Thus, taxpayers generally may continue to deduct 50 percent of the food and beverage expenses associated with operating their trade or business, including meals consumed by

employees on work travel. See H.R. Rep. No. 115-466, at 407 (2017) (Conf. Rep.). However, as before the TCJA, no deduction is allowed for the expense of any food or beverages unless (a) the expense is not lavish or extravagant under the circumstances, and (b) the taxpayer (or an employee of the taxpayer) is present at the furnishing of the food or beverages. See section 274(k).

Prior to amendment by the TCJA, section 274(d) provided substantiation requirements for deductions under section 162 or 212 for any traveling expense (including meals and lodging while away from home), and for any item with respect to an activity of a type considered to constitute entertainment, amusement, or recreation or with respect to a facility used in connection with such activity. Section 13304(a)(2)(A) of the TCJA repealed the substantiation requirements for entertainment expenditures. Traveling expenses (including meals and lodging while away from home), however, remain subject to the section 274(d) substantiation requirements. Food and beverage expenses are subject to the substantiation requirements under section 162 and the requirement to maintain books and records under section 6001.

On October 15, 2018, the Treasury Department and the IRS published Notice 2018-76, 2018-42 I.R.B. 599, providing transitional guidance on the deductibility of expenses for certain business meals and requesting comments for future guidance to further clarify the treatment of business meal expenses and entertainment expenditures under section 274. Under the notice, taxpayers may deduct 50 percent of an otherwise allowable business meal expense if: (1) The expense is an ordinary and necessary expense under section 162(a) paid or incurred during the taxable year in carrying on any trade or business; (2) the expense is not lavish or extravagant under the circumstances; (3) the taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages; (4) the food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and (5) in the case of food and beverages provided at or during an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The notice provides that the entertainment disallowance rule may not be

circumvented through inflating the amount charged for food and beverages.

2. Travel Meals

Section 274(n)(1) generally limits the deduction of food or beverage expenses, including expenses for food or beverages consumed while away from home, to 50 percent of the amount that otherwise would have been allowable, unless one of the six exceptions to section 274(n) in section 274(e) applies. However, no deduction is allowed for the expense of any food or beverages unless: (1) The expense is not lavish or extravagant under the circumstances; and (2) the taxpayer (or an employee of the taxpayer) is present at the furnishing of the food or beverages. See section 274(k). Section 274(d) provides substantiation requirements for traveling expenses, including food and beverage expenses incurred while on business travel away from home.

Section 274(m) provides additional limitations on travel expenses, including expenses for meals consumed while away from home. Section 274(m)(1) generally limits the deduction for luxury water transportation expenses to twice the highest federal per diem rate allowable at the time of travel, and section 274(m)(2) generally disallows a deduction for expenses for travel as a form of education. Section 274(m)(3) provides that no deduction is allowed under chapter 1 (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless: (1) The spouse, dependent, or other individual is an employee of the taxpayer; (2) the travel of the spouse, dependent, or other individual is for a bona fide business purpose; and (3) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

3. Employer-Provided Meals

Prior to amendment by the TCJA, section 274(n)(1) generally limited the deduction for food or beverage expenses to 50 percent of the amount that otherwise would have been allowable, subject to an exception in section 274(n)(2)(B) in the case of an expense for food or beverages that is excludable from the gross income of the recipient under section 132 by reason of section 132(e), relating to *de minimis* fringes. Section 132(e)(1) defines “*de minimis* fringe” as any property or service the value of which is, after taking into account the frequency with which similar fringes are provided by the employer to its employees, so small as

to make accounting for it unreasonable or administratively impracticable. Section 132(e)(2) provides that the operation by an employer of any eating facility for employees is treated as a *de minimis* fringe if (1) the facility is located on or near the business premises of the employer, and (2) revenue derived from the facility normally equals or exceeds the direct operating costs of the facility. Thus, under prior law, employers generally were allowed to fully deduct an expense for food or beverages provided to their employees if the amount was excludable from the gross income of the employee as a *de minimis* fringe. However, the TCJA repealed section 274(n)(2)(B), meaning that expenses for food or beverages that are *de minimis* fringes under section 132(e) are no longer excepted from section 274(n)(1). As a result, these expenses, like other food or beverage expenses generally, are subject to the 50 percent limitation unless one of the six exceptions to section 274(n) in section 274(e) applies.

The TCJA also added section 274(o) that, effective for amounts paid or incurred after December 31, 2025, disallows a deduction for (1) any expense for the operation of an employer-operated facility described in section 132(e)(2), and any expense for food or beverages, including under section 132(e)(1), associated with such facility, or (2) any expense for meals provided to an employee for the convenience of the employer, as described in section 119(a). Thus, beginning with amounts paid or incurred in 2026, expenses for food or beverages provided to employees, as well as expenses for the operation of certain eating facilities for employees, will be fully nondeductible.

4. Section 274(e) Exceptions to Section 274(k) and (n)

Section 274(k)(2)(A) and (n)(2)(A) provide that the limitations on the deduction of food or beverage expenses in section 274(k)(1) and (n)(1), respectively, do not apply if the expense is described in paragraph (2), (3), (4), (7), (8), or (9) of section 274(e). Expenses described in paragraph (1), (5), and (6) of section 274(e) are not exceptions to the limitations on the deduction of food or beverage expenses in section 274(k)(1) and (n)(1). However, they are exceptions to the disallowance of the deduction of entertainment expenses in section 274(a).

Section 274(e)(2) applies to expenses for goods, services, and facilities to the extent that the expenses are treated as compensation to the recipient. Section 274(e)(3) applies to expenses incurred

by a taxpayer in connection with the performance of services for an employer or other person under a reimbursement or other expense allowance arrangement. Section 274(e)(4) applies to expenses for recreational, social, or similar activities for employees. Section 274(e)(7) applies to expenses for goods, services, and facilities made available to the general public. Section 274(e)(8) applies to expenses for goods or services that are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth. Section 274(e)(9) applies to expenses for goods, services, and facilities to the extent that the expenses are treated as income to a person other than an employee.

Summary of Comments and Explanation of Revisions

1. Entertainment Expenditures

The final regulations restate the statutory rules under section 274(a), at § 1.274–11(a), including the application of the entertainment disallowance rule to dues or fees to any social, athletic, or sporting club or organization. The existing definition of entertainment in § 1.274–2(b)(1), with minor modifications to remove outdated language, is incorporated into the final regulations, at § 1.274–11(b)(1). The final regulations provide that for purposes of section 274(a), the term “entertainment” does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and the costs of the food or beverages are not separately stated from the entertainment costs. The final regulations do not affect the application of the special rules in § 1.274–10 to expenses related to aircraft used for entertainment.

A. Section 274(e) Exceptions to Section 274(a)

The final regulations, at § 1.274–11(c), confirm the continued application of the nine exceptions in section 274(e) to entertainment expenditures otherwise disallowed by section 274(a). The application of section 274(e) to food or beverage expenses is discussed in part 2.E. of this Summary of Comments and Explanation of Revisions section, which discusses the exceptions under section 274(e) to section 274(k) and (n).

A commenter on the proposed regulations requested that the Treasury Department and the IRS clarify that for purposes of the section 274(e)(8) exception to the entertainment deduction limitations in section 274(a) for goods or services sold by the taxpayer, the goods or services may be

sold to an employee of the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth. The Treasury Department and the IRS decline to adopt this suggestion because the section 274(e)(8) exception to the entertainment disallowance is outside the scope of these regulations. The proposed regulations and these final regulations were initiated in response to the changes made to section 274 by the TCJA and generally are limited to addressing those changes. In particular, with regard to entertainment expenditures, the final regulations under § 1.274–11 primarily distinguish between meals and entertainment, as that distinction is now relevant, for purposes of determining whether the deduction of a particular expense is disallowed entirely or is limited to 50 percent. However, the TCJA did not change the application of the section 274(e) exceptions to entertainment expenditures. Thus, other than confirming that the section 274(e) exceptions continue to apply to entertainment expenditures, the final regulations do not provide rules addressing how the section 274(e) exceptions apply to entertainment expenditures. Taxpayers may, however, continue to rely upon the existing rules and examples in § 1.274–2 to the extent they are not superseded by the TCJA or other legislation and are not inconsistent with the final regulations.

B. Separately Stated Food or Beverages not Entertainment

The final regulations substantially incorporate the guidance in Notice 2018–76 to distinguish between entertainment expenditures and food or beverage expenses in the context of business meals provided at or during an entertainment activity. In addition, the final regulations generally apply the guidance in Notice 2018–76 to all food or beverages, including travel meals and employer-provided meals, provided at or during an entertainment activity. The final regulations also clarify the rules applicable to food or beverages provided at or during an entertainment activity.

Notice 2018–76 explains that in the case of food and beverages provided at or during an entertainment activity, the taxpayer may deduct 50 percent of an otherwise allowable business expense if the food and beverages are purchased separately from the entertainment, or if the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The notice provides that the entertainment disallowance rule may not be

circumvented through inflating the amount charged for food and beverages. The final regulations clarify this requirement by providing that the amount charged for food or beverages on a bill, invoice, or receipt must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment, or must approximate the reasonable value of those items.

The final regulations provide that in cases where the food or beverages provided at or during an entertainment activity are not purchased separately from the entertainment, and where the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation can be made and the entire amount is a nondeductible entertainment expenditure. Finally, in accordance with the TCJA's amendments to section 274(a)(1) specifically repealing the “directly related” and “business discussion” exceptions to the general disallowance rule for entertainment expenditures, the final regulations clarify that the entertainment disallowance rule applies whether or not the expenditure for the activity is related to or associated with the active conduct of the taxpayer's trade or business.

A commenter suggested that the final regulations provide that the consumption of food and beverages is not entertainment in the case of both business and nonbusiness activities and include an example of a specified individual consuming food and beverages while traveling on an employer-provided aircraft to visit family members for nonbusiness purposes. The specific question presented in this comment relates to whether air travel is an entertainment activity and is addressed in the existing rules in § 1.274–10. Therefore, this question is not addressed in the final regulations. In addition, § 1.274–11(b)(1)(ii) provides that the term *entertainment* does not include food or beverages unless the food or beverages are provided at or during an entertainment activity and are not purchased separately from the entertainment.

2. Food or Beverage Expenses

A. Business Meal Expenses

The final regulations substantially incorporate the guidance in Notice 2018–76 addressing business meals provided at or during an entertainment activity. The final regulations also incorporate other statutory requirements

taxpayers must meet to deduct 50 percent of an otherwise allowable food or beverage expense. Specifically, the expense must not be lavish or extravagant under the circumstances, and the taxpayer, or an employee of the taxpayer, must be present at the furnishing of the food or beverages.

The final regulations also address the general requirement in Notice 2018-76 that the food and beverages be provided to a business contact, which was described in the notice as a “current or potential business customer, client, consultant, or similar business contact.” This requirement is to ensure that the meal expenses are directly connected with or pertaining to the taxpayer’s trade or business, as required under section 162. One commenter on Notice 2018-76 requested a definition of “potential business contact,” suggesting that the term could be interpreted broadly to include almost anyone. In response to the comment, and to conform the rule more closely to the trade or business requirement in section 162, the proposed regulations follow the definition of “business associate” as currently provided in § 1.274-2(b)(2)(iii). The final regulations adopt this definition of “business associate” in § 1.274-12(b)(3). Thus, the final regulations provide that the food or beverages must be provided to a “person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer’s trade or business such as the taxpayer’s customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective.” Accordingly, the final regulations apply this definition to employer-provided food or beverage expenses by considering employees as a type of business associate as well as to the deduction for expenses for meals provided by a taxpayer to both employees and non-employee business associates at the same event.

A commenter on the proposed regulations asked whether the Treasury Department and the IRS have legal authority to allow taxpayers to claim deductions for business meal expenses that have been considered part of entertainment since the enactment of section 274. The commenter acknowledged that the legislative history of the TCJA provides that taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel). H.R. Rep. No. 115-466 at 407. However, the commenter argued that the legislative history merely recognizes that travel

meals remain 50 percent deductible. The commenter further argued that the term “entertainment” clearly encompasses many business meals and that the proposed regulations unsettle the longstanding position that expenditures for the personal enjoyment of an individual fall within the ordinary meaning of “entertainment.”

The Treasury Department and the IRS believe that Congress, in amending section 274 in the TCJA, intended that expenses for business meals be considered food or beverage expenses associated with operating a taxpayer’s trade or business, and therefore generally remain 50 percent deductible. The Treasury Department and the IRS acknowledge that, prior to the TCJA, some meals were considered to be entertainment. However, prior to the TCJA, neither section 274 nor the regulations under section 274 attempted to define meal expenses or to distinguish meal expenses from entertainment expenses. In considering the comment, the Treasury Department and the IRS believe that the proposed regulations are consistent with the plain reading of section 274 after the TCJA, which clearly contemplates different treatment for meal expenses and entertainment expenses. In addition, the existing regulatory definition of entertainment relies upon an objective test to determine whether an activity is of a type generally considered to constitute entertainment. Providing that business meals are not of a type generally considered to constitute entertainment results in an administrable rule that does not depend on subjective factors such as whether the taxpayer enjoys the business meal. Thus, the final regulations adopt the proposed rule providing that business meals generally remain 50 percent deductible. The Treasury Department and the IRS believe that the final regulations provide a rule that is legally supportable and that draws a clear line between meals and entertainment that taxpayers can understand and the IRS can administer.

One commenter also asked whether the proposed regulations were intended to provide new guidance under section 162(a), specifically as to the definition of “ordinary and necessary expense.” The proposed regulations provide guidance only under section 274 and are not intended to provide guidance under section 162. In response to the comment, the final regulations modify Examples 1 and 2 in proposed § 1.274-12(a)(3) by removing any mention of a discussion that takes place during lunch because the facts already explain that in each example, the food or beverage

expenses are assumed to be ordinary and necessary expenses under section 162(a). In addition, the final regulations clarify, as necessary, in the introductory language to the examples in § 1.274-11 and § 1.274-12 that the examples assume that the underlying expenses are deductible under section 162.

Two commenters requested that the final regulations add an example addressing the treatment of expenses for food and beverages provided to attendees at a business meeting, such as a conference for clients or a training seminar for employees. In response to these comments, the final regulations add two new examples to § 1.274-12(a)(3) to address these scenarios.

A commenter also asked whether under proposed § 1.274-12(a), a taxpayer may claim a 50 percent deduction for food or beverages provided to the taxpayer (or an employee of the taxpayer), as well as food or beverages provided to a business associate. The commenter noted that proposed § 1.274-12(a)(1) refers to “food or beverages provided to a business associate,” raising a question about whether the rule applies to food or beverages provided to the taxpayer or the taxpayer’s employees. In addition, § 1.274-12(a)(1) of the proposed regulations refers to food or beverages provided “to another person or persons.” It was intended that the 50 percent deduction applies to food and beverages provided to the taxpayer (or an employee of the taxpayer), as well as a business associate or another person. In response to the comment, the final regulations revise § 1.274-12(a)(1) to remove the reference to food or beverages being provided “to another person or persons.” In addition, as discussed in part 2.A. of this Summary of Comments and Explanation of Revisions, the final regulations include employees in the definition of “business associate” (as defined in § 1.274-12(b)(3)). Finally, to make clear that the rules in § 1.274-12(a)(1) also apply to food or beverages provided to a taxpayer such as a sole proprietor or other business owner, the final regulations revise § 1.274-12(a)(1)(iii) to refer to food or beverages provided “to the taxpayer or a business associate.”

One commenter asked whether a sole proprietor can deduct the cost of meals when working throughout the day. As explained in the Background section of this preamble, section 274 limits or disallows deductions for certain meal and entertainment expenditures that otherwise would be allowable under chapter 1, primarily under section 162(a), which allows a deduction for ordinary and necessary expenses paid or

incurred during the taxable year in carrying on any trade or business. The requirements imposed by section 274 are in addition to the requirements for deductibility imposed by other provisions of the Code. If a taxpayer intends to claim a deduction for an expenditure for meals or entertainment, the taxpayer must first establish that the expenditure is otherwise allowable as a deduction under chapter 1 before the provisions of section 274 become applicable. Therefore, the sole proprietor must first establish that the food or beverage expense is deductible under chapter 1 before section 274 would apply. For example, if the sole proprietor can establish that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business, the sole proprietor may deduct 50 percent of the food or beverage expenses under section 274(k) and (n) and § 1.274–12(a) of the final regulations if: (1) The expenses are not lavish or extravagant; (2) the sole proprietor, or an employee of the sole proprietor, is present at the furnishing of the food or beverages; and (3) the food or beverages are provided to the sole proprietor or a business associate (as defined in § 1.274–12(b)(3)).

B. Travel Meal Expenses

Although the TCJA did not specifically amend the rules for travel expenses, the final regulations are intended to provide comprehensive rules for food and beverage expenses and thus, apply the general rules for meal expenses from Notice 2018–76 and the proposed regulations, to travel meals. In addition, the final regulations incorporate the substantiation requirements in section 274(d), unchanged by the TCJA, to travel meals. Finally, the final regulations apply the limitations in section 274(m)(3) to expenses for food or beverages paid or incurred while on travel for spouses, dependents or other individuals accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel. These limitations do not apply to deductions for moving expenses under section 217. However, the TCJA amended section 217 to suspend the deduction for moving expenses for taxable years beginning after December 31, 2017, and before January 1, 2026, except with respect to certain members of the Armed Forces. Thus, the final regulations revise the reference to section 217 to reflect that amendment.

One commenter asked how the proposed regulations affect employees

that are paid a per diem rate for travel expenses and are subject to the hours of service limitations of the Department of Transportation. The proposed regulations describe and clarify the statutory requirements of section 274(a), 274(k), and 274(n) for entertainment and food or beverage expenses, as well as the applicability of certain exceptions under section 274(e) to food or beverage expenses. The TCJA did not change the rules for using a per diem rate to substantiate, under section 274(d), the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Thus, neither the proposed regulations nor the final regulations address the substantiation rules.

C. Other Food or Beverage Expenses

The final regulations apply the business meal guidance in Notice 2018–76, as revised in the proposed regulations, to food or beverage expenses generally. Under section 274(n)(1), the deduction for food or beverage expenses generally is limited to 50 percent of the amount that would otherwise be allowable. Prior to the TCJA, under section 274(n)(2)(B), expenses for food or beverages that were excludable from employee income as *de minimis* fringe benefits under section 132(e) were not subject to the 50 percent deduction limitation under section 274(n)(1) and could be fully deducted. The TCJA repealed section 274(n)(2)(B) so that expenses for food or beverages excludable from employee income under section 132(e) are subject to the section 274(n)(1) deduction limitation unless another exception under section 274(n)(2) applies.

Under section 274(k)(1), in order for food or beverage expenses to be deductible the food or beverages must not be lavish or extravagant under the circumstances and the taxpayer or an employee of the taxpayer must be present at the furnishing of the food or beverages. However, as discussed in the Background section of this preamble, section 274(e) provides six exceptions to the limitations on the deduction of food or beverages in section 274(k)(1) and (n)(1). The final regulations explain how those exceptions apply. The Background section of this preamble also explains that the exceptions in section 274(e)(1), (e)(5), and (e)(6) do not apply to food or beverage expenses. Section 1.274–12(a)(3) of the final regulations adds an example illustrating that the exception in section 274(e)(5) does not apply to food or beverage expenses that are directly related to business meetings of a taxpayer's employees.

In response to comments that the Treasury Department and the IRS received after enactment of the TCJA, the final regulations address several scenarios involving the deductibility of food or beverage expenses. For example, commenters requested guidance on the deductibility of expenses for: (1) Food or beverages provided to food service workers who consume the food or beverages while working in a restaurant or catering business; (2) snacks available to employees in a pantry, break room, or copy room; (3) refreshments provided by a real estate agent at an open house; (4) food or beverages provided by a seasonal camp to camp counselors; (5) food or beverages provided to employees at a company cafeteria; and (6) food or beverages provided at company holiday parties and picnics.

D. Definitions

The final regulations provide that the deduction limitation rules generally apply to all food and beverages, whether characterized as meals, snacks, or other types of food or beverage items. In addition, unless one of six exceptions under section 274(e) applies, the deduction limitations apply regardless of whether the food or beverages are treated as *de minimis* fringe benefits under section 132(e).

The final regulations define food or beverage expenses to mean the cost of food or beverages, including any delivery fees, tips, and sales tax. In the case of employer-provided meals at an eating facility, food or beverage expenses do not include expenses for the operation of the eating facility such as salaries of employees preparing and serving meals and other overhead costs.

A commenter requested clarification that the cost of transportation to a meal is not included in food or beverage expenses. The Treasury Department and the IRS considered this comment and note that food or beverage expenses under § 1.274–12(b)(2) of the final regulations means the full cost of food or beverages, including any delivery fees, tips, and sales tax. Indirect expenses, including the cost of transportation to a meal, are not included in the definition.

E. Section 274(e) Exceptions to Section 274(k) and (n)

Section 274(k)(2)(A) and (n)(2)(A) provide that the limitations on deductions in section 274(k)(1) and (n)(1), respectively, do not apply to any expense described in section 274(e)(2), (3), (4), (7), (8), and (9). Section 1.274–12(c) of the final regulations, therefore, provides that the deduction limitations are not applicable to expenditures for

business meals, travel meals, or other food or beverages that fall within one of these exceptions.

i. Expenses Treated as Compensation Under Section 274(e)(2) or (e)(9)

Pursuant to section 274(e)(2), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenditures for food or beverages provided to an employee of the taxpayer to the extent the taxpayer treats the expenses as compensation to the employee on the taxpayer's income tax return as originally filed, and as wages to the employee for purposes of withholding under chapter 24 of the Code, relating to collection of income tax at source on wages.

Pursuant to section 274(e)(9), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenses for food or beverages provided to a person who is not an employee of the taxpayer to the extent the expenses are includible in the gross income of the recipient of the food or beverages as compensation for services rendered or as a prize or award under section 74.

The exceptions in section 274(e)(2) related to employees and in section 274(e)(9) related to non-employees have been interpreted as allowing a taxpayer to deduct the full amount of an expense if the expense has properly been included in the compensation and wages of the employee, or gross income of the recipient, even if the amount of the expense exceeds the amount included in compensation or income. See *Sutherland Lumber-Southwest Inc. v. Commissioner*, 114 T.C. 197 (2000), *affd.*, 255 F.3d 495 (8th Cir. 2001), *acq.*, AOD 2002-02 (February 11, 2002). In 2004, Congress reversed the result in the *Sutherland Lumber-Southwest* case by enacting section 274(e)(2)(B) with regard to specified individuals. Thus, with regard to employees or non-employees who are specified individuals, section 274(e)(2)(B) provides an exception to the section 274(n) limitation only "to the extent that the expenses do not exceed the amount of the expenses which" are treated as compensation and wages to the employee or as income to a non-employee. This methodology is also referred to in this preamble as the "dollar-for-dollar" methodology.

The Treasury Department and the IRS are aware that some taxpayers may attempt to claim a full deduction under section 274(e)(2) or (e)(9) by including a value that is less than the amount required to be included under § 1.61-21, which provides the rules for valuation of fringe benefits, or by purportedly including a value of zero, as

compensation and wages to the employee, or as includible in gross income by a person who is not an employee of the taxpayer. As a result, the proposed regulations provide that expenses for food or beverages for which the taxpayer calculates a value that is less than the amount required to be included in gross income under § 1.61-21, or for which the amount required to be included in gross income is zero, will not be considered as having been treated as compensation and as wages to the employee, or as includible in gross income by a recipient of the food or beverages who is not an employee of the taxpayer, for purposes of section 274(e)(2) and (e)(9).

Commenters argued that the proposed rule disallowing the application of section 274(e)(2) and (e)(9) to expenses for which an improper amount is included in compensation and wages or in gross income, as applicable, is unduly harsh given the difficulty in determining the value of food or beverages under § 1.61-21 and the possibility of good faith errors. In addition, a commenter noted that neither the "to the extent that" language in section 274(e)(2)(A) nor the holding in *Sutherland Lumber-Southwest* support applying an "all or nothing" rule against the taxpayer.

The Treasury Department and the IRS agree that the "all or nothing" rule included in the proposed regulations may lead to unduly harsh results. Therefore, in response to these comments, the Treasury Department and the IRS revised the rules in proposed § 1.274-12(c)(2)(i) to allow a taxpayer to apply section 274(e)(2) and (e)(9), as applicable, in cases where the taxpayer includes an improper amount in compensation and wages, or gross income, of the recipient. However, if a taxpayer includes less than the proper amount in compensation and wages or gross income, the final regulations provide that the taxpayer must apply the dollar-for-dollar methodology that applies in the case of a specified individual. Under that dollar-for-dollar methodology, the taxpayer may deduct meal expenses to the extent that the expenses do not exceed the amount of the expenses that are treated as compensation and wages, or gross income, as applicable.

The Treasury Department and the IRS believe the rules provided in the final regulations avoid the unduly harsh result that could arise by prohibiting application of section 274(e)(2) or (e)(9) in cases where the taxpayer includes some, but not all, of the value of a food or beverage expense in the recipient's income. In addition, the rules maintain

consistency with the IRS's acquiescence in *Sutherland Lumber*, which provides that the IRS will no longer litigate application of section 274(e)(2) in cases in which a taxpayer demonstrates that it has "properly" included in compensation and wages the value of an employee vacation flight in accordance with § 1.61-21(g). See AOD-2002-02. The rules are also consistent with § 1.274-10(a)(2)(ii)(A), which applies the section 274(e)(2) exception to entertainment air travel and provides that a taxpayer must "properly" treat expenses as compensation and wages to an employee and treat the proper amount as compensation under § 1.61-21.

For administrability, a commenter suggested that the rule apply to the amounts included on the employee's Form W-2 or other recipient's Form 1099-MISC instead of amounts reported as compensation on the service provider's return. The language in the proposed regulations refers to the treatment of the amount on the "taxpayer's income tax return as originally filed," meaning the tax return of the employer, not the employee or service provider. However, to further clarify the rule, § 1.274-12(c)(2)(i)(A) of the final regulations no longer references the treatment of the amount on the taxpayer's income tax return, but instead refers to the treatment of the expense as compensation and wages, consistent with the language in § 1.274-10(a)(2)(ii)(A).

A commenter suggested the final regulations address the effect of reimbursements by employees, specified individuals, or other recipients of the food or beverages on the amount excepted from the limitations under section 274(k)(1) and (n)(1) by section 274(e)(2) and (e)(9). The commenter explained that § 1.274-10(a)(2)(ii)(C)(2) treats reimbursements in the same manner as compensation and wages for specified individuals, and a similar rule should be provided for reimbursements from non-specified individuals. The commenter pointed out that without a similar rule, expenses for food or beverages provided to specified individuals may be accorded more favorable treatment than expenses provided to non-specified individuals. The Treasury Department and the IRS agree that in cases in which expenditures for food and beverages are reimbursed to the taxpayer, similar treatment should be provided under section 274, regardless of whether the food or beverages are provided to a specified or non-specified individual.

With regard to non-specified individuals, the final regulations

provide that a taxpayer may deduct its food or beverage expenses under the exception in section 274(e)(2)(A) or section 274(e)(9) if the taxpayer includes the proper amount in compensation and wages, or gross income, as applicable. Section 1.61–21(b)(1) provides rules for the valuation of fringe benefits and requires that an employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of the amount paid for the benefit by or on behalf of the recipient and the amount, if any, specifically excluded from gross income under the Code. Thus, in the case of reimbursements by a recipient, the amount of the reimbursement is taken into account in determining the amount properly includible in the recipient's income and does not affect the taxpayer's ability to use the exception in section 274(e)(2)(A) or section 274(e)(9).

With regard to improper inclusions in compensation and wages or gross income, the final regulations provide that the taxpayer must apply the dollar-for-dollar methodology as described in § 1.274–12(c)(2)(i)(D). Under that rule, food and beverage expenses are deductible to the extent that the expenses do not exceed the sum of the amount of the expenses that are treated as compensation and wages or gross income, and any amount the recipient reimburses the taxpayer. This dollar-for-dollar rule is the same methodology that applies under section 274(e)(2)(B) for food or beverages provided to specified individuals.

The final regulations also include a provision for specified individuals providing that the exceptions of section 274(e)(2) and (e)(9) generally apply only to the extent that the food or beverage expenses do not exceed the amount of the food or beverage expenses treated as compensation (under section 274(e)(2)) or as income (under section 274(e)(9)) to the specified individual. The final regulations provide, however, that amounts reimbursed to the taxpayer by the specified individual, will reduce the amount subject to the limitations under section 274(k)(1) and (n)(1). This rule conforms to the statutory language in section 274(e)(2)(B) and the regulatory language in § 1.274–10. Thus, the final regulations address the comment asking for clarification of the effect of reimbursements by employees, specified individuals, and other recipients of the food or beverages on the amount excepted from the limitations under section 274(k)(1) and (n)(1) by section 274(e)(2) and (e)(9).

The Treasury Department and the IRS continue to believe that if the amount to

be included in compensation and wages or gross income is zero, whether zero is a proper or improper amount, the exceptions in section 274(e)(2) and section 274(e)(9) do not apply because no amount has been included in compensation and wages or gross income. For example, if the amount to be included is zero because the value of the food or beverages is excluded as a fringe benefit under section 132, the exceptions in section 274(e)(2) and (e)(9) do not apply. Similarly, the exceptions in section 274(e)(2) and (e)(9) do not apply if the amount to be included is zero solely because the recipient has fully reimbursed the taxpayer for the food or beverages. In that case, however, the exception in section 274(e)(8) may apply if the food or beverages are sold to the recipient in a bona fide transaction for an adequate and full consideration in money or money's worth.

ii. Food or Beverage Expenses Provided Under Reimbursement Arrangements

Pursuant to section 274(e)(3), the final regulations provide that in the case of expenses for food or beverages paid or incurred by one person in connection with the performance of services for another person (whether or not the other person is an employer) under a reimbursement or other expense allowance arrangement, the limitations on deductions in section 274(k)(1) and (n)(1) apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both. Section 274(e)(3)(B) provides that if the services are performed for a person other than an employer, such as by an independent contractor, the exception in section 274(e)(3) applies only if the taxpayer, in this case, the independent contractor, accounts, to the extent provided by section 274(d), to such person. The final regulations therefore provide that the deduction limitations in section 274(k)(1) and (n)(1) apply to an independent contractor unless, under a reimbursement or other expense allowance arrangement, the contractor accounts to its client or customer with substantiation that satisfies the requirements of section 274(d).

iii. Recreational Expenses for Employees

Pursuant to section 274(e)(4), the final regulations provide that any food or beverage expense paid or incurred by a taxpayer for a recreational, social, or similar activity, primarily for the benefit of the taxpayer's employees, is not subject to the deduction limitations in section 274(k)(1) and (n)(1). However, activities that discriminate in favor of

highly compensated employees, officers, shareholders or others who own a 10-percent or greater interest in the business are not considered paid or incurred primarily for the benefit of employees.

Many of the comments received after enactment of the TCJA requested confirmation that food or beverage expenses for company holiday parties and picnics that do not discriminate in favor of highly compensated employees are not subject to the deduction limitations in section 274(k)(1) and (n)(1) because the exception in section 274(e)(4) applies. These comments also suggested that expenses for snacks and beverages available to all employees in a pantry, break room, or copy room are not subject to the deduction limitations in section 274(k)(1) and (n)(1) because the exception in section 274(e)(4) applies.

In response to the questions and comments received, the proposed regulations confirm the rules in the existing regulations at § 1.274–2(f)(2)(v) that the exception in section 274(e)(4) applies to food or beverage expenses for company holiday parties, annual picnics, or summer outings that do not discriminate in favor of highly compensated employees. However, an example in the proposed regulations demonstrates that the section 274(e)(4) exception does not apply to free food or beverages available to all employees in a pantry, break room, or copy room because the mere provision or availability of food or beverages is not a recreational, social, or similar activity, despite the fact that employees may incidentally socialize while they are in the break room. The final regulations adopt the proposed regulations with respect to the application of section 274(e)(4) in this context.

In addition, the final regulations provide that the exception in section 274(e)(4) does not apply to food or beverage expenses that are excludable from employees' income under section 119 as meals provided for the convenience of the employer. Because these food or beverages are, by definition, furnished for the employer's convenience, they cannot also be primarily for the benefit of the employees, even if some social activity occurs during the provision of the food or beverages.

iv. Items Available to the Public

Pursuant to section 274(e)(7), the final regulations provide that food or beverage expenses of a taxpayer are not subject to the deduction limitations in section 274(k)(1) and (n)(1) to the extent the food or beverages are made available

to the general public. In addition, the final regulations provide that this exception applies to expenses for food or beverages provided to employees if similar food or beverages are provided by the employer to, and are primarily consumed by, the general public. For this purpose, “primarily consumed” means greater than 50 percent of actual or reasonably estimated consumption, and “general public” includes, but is not limited to, customers, clients, and visitors. The final regulations also provide that the general public does not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), or independent contractors of the taxpayer. Further, an exclusive list of guests also is not considered the general public. See *Churchill Downs, Inc. v. Commissioner*, 307 F.3d 423 (6th Cir. 2002).

Comments received in response to Notice 2018–76 requested guidance as to whether the exception in section 274(e)(7) for food or beverages made available by the taxpayer to the general public applies in various situations. The Treasury Department and the IRS considered these comments and included examples in the proposed regulations to illustrate that the exception in section 274(e)(7) generally applies to the entire food or beverage expense if the food or beverages are primarily consumed by the general public. The final regulations retain these examples.

v. Goods or Services Sold to Customers

Pursuant to section 274(e)(8), the final regulations provide that any expense for food or beverages that are sold to customers in a bona fide transaction for an adequate and full consideration in money or money’s worth is not subject to the deduction limitations in section 274(k)(1) and (n)(1). The final regulations clarify that money or money’s worth does not include payment through services provided.

The Treasury Department and the IRS are aware of concerns raised by commenters that it is a common business practice for employers of restaurant and food service workers to provide food or beverages at no cost or at a discount to their employees. The Joint Committee on Taxation’s Bluebook on the TCJA explains that amendments made by the TCJA to limit the deduction for expenses of the employer associated with providing food or beverages to employees through an employer-operated eating facility that meets the requirements of section 132(e)(2) do not affect other exceptions to the 50-percent limitation on deductions for food or beverage expenses. For example, a

restaurant or catering business may continue to deduct 100 percent of its costs for food or beverage items, purchased in connection with preparing and providing meals to its paying customers, which are also consumed at the worksite by employees who work in the employer’s restaurant or catering business. Joint Committee on Taxation, *General Explanation of Public Law 115–97* (JCS–1–18), at 186 n.940 and at 188 n.956, December 2018. The final regulations adopt this interpretation of the exception in section 274(e)(8).

Finally, the final regulations provide that for purposes of the section 274(e)(8) exception to the deduction limitations in section 274(k)(1) and (n)(1), the term “customer” includes anyone who is sold food or beverages in a bona fide transaction for an adequate and full consideration in money or money’s worth. For example, employees of the taxpayer are customers when they purchase food or beverages from the taxpayer in a bona fide transaction for arm’s length, fair market value prices.

Statement of Availability of IRS Documents

Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Applicability Date

These regulations apply to taxable years that begin on or after October 9, 2020.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small entities, the economic impact of the regulations is not likely to be significant. Data are not readily available about the number of taxpayers affected, but the number is likely to be substantial for both large and small entities because the rule may affect entities that incur meal and entertainment expenses. The economic impact of these regulations is not likely

to be significant, however, because these final regulations substantially incorporate prior guidance and otherwise clarify the application of the TCJA changes to section 274 related to meals and entertainment. These final regulations will assist taxpayers in understanding the changes to section 274 and make it easier for taxpayers to comply with those changes. Accordingly, the Secretary of the Treasury’s delegate certifies that the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these regulations on small entities.

Pursuant to section 7805(f), these final regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. No comments on the proposed regulations were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Effect on Other Documents

The following publications are obsolete as of October 9, 2020.

Notice 2018–76 (2018–42 I.R.B. 599).

Drafting Information

The principal author of these final regulations is Patrick Clinton, Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.274–11 also issued under 26 U.S.C. 274.

Section 1.274–12 also issued under 26 U.S.C. 274.

■ **Par. 2.** Section 1.274–11 is added to read as follows:

§ 1.274–11 Disallowance of deductions for certain entertainment, amusement, or recreation expenditures paid or incurred after December 31, 2017.

(a) *In general.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Internal Revenue Code (Code) is allowed for any expenditure with respect to an activity that is of a type generally considered to be entertainment, or with respect to a facility used in connection with an entertainment activity. For this purpose, dues or fees to any social, athletic, or sporting club or organization are treated as items with respect to facilities and, thus, are not deductible. In addition, no deduction otherwise allowable under chapter 1 of the Code is allowed for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) *Definitions*—(1) *Entertainment*—(i) *In general.* For section 274 purposes, the term *entertainment* means any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at bars, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips, including such activity relating solely to the taxpayer or the taxpayer's family. These activities are treated as entertainment under this section, subject to the objective test, regardless of whether the expenditure for the activity is related to or associated with the active conduct of the taxpayer's trade or business. The term *entertainment* may include an activity, the cost of which otherwise is a business expense of the taxpayer, which satisfies the personal, living, or family needs of any individual, such as providing a hotel suite or an automobile to a business customer or the customer's family. The term *entertainment* does not include activities which, although satisfying personal, living, or family needs of an individual, are clearly not regarded as constituting entertainment, such as the providing of a hotel room maintained by an employer for lodging of employees while in business travel status or an automobile used in the active conduct of a trade or business even though used for routine personal purposes such as commuting to and from work. On the other hand, the providing of a hotel room or an automobile by an employer to an employee who is on vacation would constitute entertainment of the employee.

(ii) *Food or beverages.* Under this section, the term *entertainment* does not

include food or beverages unless the food or beverages are provided at or during an entertainment activity. Food or beverages provided at or during an entertainment activity generally are treated as part of the entertainment activity. However, in the case of food or beverages provided at or during an entertainment activity, the food or beverages are not considered entertainment if the food or beverages are purchased separately from the entertainment, or the cost of the food or beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The amount charged for food or beverages on a bill, invoice, or receipt must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment or must approximate the reasonable value of those items. If the food or beverages are not purchased separately from the entertainment, or the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation between entertainment and food or beverage expenses may be made and, except as further provided in this section and section 274(e), the entire amount is a nondeductible entertainment expenditure under this section and section 274(a).

(iii) *Objective test.* An objective test is used to determine whether an activity is of a type generally considered to be entertainment. Thus, if an activity is generally considered to be entertainment, it will be treated as entertainment for purposes of this section and section 274(a) regardless of whether the expenditure can also be described otherwise, and even though the expenditure relates to the taxpayer alone. This objective test precludes arguments that *entertainment* means only entertainment of others or that an expenditure for entertainment should be characterized as an expenditure for advertising or public relations. However, in applying this test the taxpayer's trade or business is considered. Thus, although attending a theatrical performance generally would be considered entertainment, it would not be so considered in the case of a professional theater critic attending in a professional capacity. Similarly, if a manufacturer of dresses conducts a fashion show to introduce its products to a group of store buyers, the show generally would not be considered entertainment. However, if an appliance distributor conducts a fashion show, the fashion show generally would be considered to be entertainment.

(2) *Expenditure.* The term *expenditure* as used in this section includes amounts paid or incurred for goods, services, facilities, and other items, including items such as losses and depreciation.

(3) *Expenditures for production of income.* For purposes of this section, any reference to *trade or business* includes an activity described in section 212.

(c) *Exceptions.* Paragraph (a) of this section does not apply to any expenditure described in section 274(e)(1), (2), (3), (4), (5), (6), (7), (8), or (9).

(d) *Examples.* The following examples illustrate the application of paragraphs (a) and (b) of this section. In each example, assume that the taxpayer is engaged in a trade or business for purposes of section 162 and that neither the taxpayer nor any business associate is engaged in a trade or business that relates to the entertainment activity. Also assume that none of the exceptions under section 274(e) and paragraph (c) of this section apply.

(1) *Example 1.* Taxpayer A invites, B, a business associate, to a baseball game to discuss a proposed business deal. A purchases tickets for A and B to attend the game. The baseball game is entertainment as defined in § 1.274–11(b)(1) and thus, the cost of the game tickets is an entertainment expenditure and is not deductible by A.

(2) *Example 2.* The facts are the same as in paragraph (d)(1) of this section (*Example 1*), except that A also buys hot dogs and drinks for A and B from a concession stand. The cost of the hot dogs and drinks, which are purchased separately from the game tickets, is not an entertainment expenditure and is not subject to the disallowance under § 1.274–11(a) and section 274(a)(1). Therefore, A may deduct 50 percent of the expenses associated with the hot dogs and drinks purchased at the game if the expenses meet the requirements of section 162 and § 1.274–12.

(3) *Example 3.* Taxpayer C invites D, a business associate, to a basketball game. C purchases tickets for C and D to attend the game in a suite, where they have access to food and beverages. The cost of the basketball game tickets, as stated on the invoice, includes the food or beverages. The basketball game is entertainment as defined in § 1.274–11(b)(1), and, thus, the cost of the game tickets is an entertainment expenditure and is not deductible by C. The cost of the food and beverages, which are not purchased separately from the game tickets, is not stated separately on the invoice. Thus, the cost of the food and beverages is an entertainment expenditure that is subject to

disallowance under section 274(a)(1) and paragraph (a) of this section, and C may not deduct the cost of the tickets or the food and beverages associated with the basketball game.

(4) *Example 4.* The facts are the same as in paragraph (d)(3) of this section (*Example 3*), except that the invoice for the basketball game tickets separately states the cost of the food and beverages and reflects the venue's usual selling price if purchased separately. As in paragraph (d)(3) of this section (*Example 3*), the basketball game is entertainment as defined in § 1.274-11(b)(1), and, thus, the cost of the game tickets, other than the cost of the food and beverages, is an entertainment expenditure and is not deductible by C. However, the cost of the food and beverages, which is stated separately on the invoice for the game tickets and reflects the venue's usual selling price of the food and beverages if purchased separately, is not an entertainment expenditure and is not subject to the disallowance under section 274(a)(1) and paragraph (a) of this section. Therefore, C may deduct 50 percent of the expenses associated with the food and beverages provided at the game if the expenses meet the requirements of section 162 and § 1.274-12.

(e) *Applicability date.* This section applies for taxable years that begin on or after October 9, 2020.

■ **Par. 3.**

Section 1.274-12 is added to read as follows:

§ 1.274-12 Limitation on deductions for certain food or beverage expenses paid or incurred after December 31, 2017.

(a) *Food or beverage expenses*—(1) *In general.* Except as provided in this section, no deduction is allowed for the expense of any food or beverages provided by the taxpayer (or an employee of the taxpayer) unless—

- (i) The expense is not lavish or extravagant under the circumstances;
- (ii) The taxpayer, or an employee of the taxpayer, is present at the furnishing of such food or beverages; and
- (iii) The food or beverages are provided to the taxpayer or a business associate.

(2) *Only 50 percent of food or beverage expenses allowed as deduction.* Except as provided in this section, the amount allowable as a deduction for any food or beverage expense described in paragraph (a)(1) of this section may not exceed 50 percent of the amount of the expense that otherwise would be allowable.

(3) *Examples.* The following examples illustrate the application of paragraph (a)(1) and (2) of this section. In each

example, assume that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business and are not lavish or extravagant under the circumstances. Also assume that none of the exceptions in paragraph (c) of this section apply.

(i) *Example 1.* Taxpayer A takes client B out to lunch. Under section 274(k) and (n) and paragraph (a) of this section, A may deduct 50 percent of the food or beverage expenses.

(ii) *Example 2.* Taxpayer C takes employee D out to lunch. Under section 274(k) and (n) and paragraph (a) of this section, C may deduct 50 percent of the food or beverage expenses.

(iii) *Example 3.* Taxpayer E holds a business meeting at a hotel during which food and beverages are provided to attendees. Expenses for the business meeting, other than the cost of food and beverages, are not subject to the deduction limitations in section 274 and are deductible if they meet the requirements for deduction under section 162. Under section 274(k) and (n) and paragraph (a) of this section, E may deduct 50 percent of the food and beverage expenses.

(iv) *Example 4.* The facts are the same as in paragraph (a)(3)(iii) of this section (*Example 3*), except that all the attendees of the meeting are employees of E. Expenses for the business meeting, other than the cost of food and beverages, are not subject to the deduction limitations in section 274 and are deductible if they meet the requirements for deduction under section 162. Under section 274(k) and (n) and paragraph (a) of this section, E may deduct 50 percent of the food and beverage expenses. The exception in section 274(e)(5) does not apply to food and beverage expenses under section 274(k) and (n).

(4) *Special rules for travel meals.* (i) *In general.* Food or beverage expenses paid or incurred while traveling away from home in pursuit of a trade or business generally are subject to the deduction limitations in section 274(k) and (n) and paragraph (a)(1) and (2) of this section, as well as the substantiation requirements in section 274(d). In addition, travel expenses generally are subject to the limitations in section 274(m)(1), (2), and (3).

(ii) *Substantiation.* Except as provided in this section, no deduction is allowed for the expense of any food or beverages paid or incurred while traveling away from home in pursuit of a trade or business unless the taxpayer meets the substantiation requirements in section 274(d).

(iii) *Travel meal expenses of spouse, dependent or others.* No deduction is allowed under chapter 1 of the Internal Revenue Code (Code), except under section 217 for certain members of the Armed Forces of the United States, for the expense of any food or beverages paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer, or an officer or employee of the taxpayer, on business travel, unless—

(A) The spouse, dependent, or other individual is an employee of the taxpayer;

(B) The travel of the spouse, dependent, or other individual is for a bona fide business purpose of the taxpayer; and

(C) The expenses would otherwise be deductible by the spouse, dependent or other individual.

(D) *Example.* The following example illustrates the application of paragraph (a)(4)(iii) of this section:

(1) *Example.* Taxpayer F, a sole proprietor, and Taxpayer F's spouse travel from New York to Boston to attend a series of business meetings related to F's trade or business. F's spouse is not an employee of F, does not travel to Boston for a bona fide business purpose of F, and the expenses would not otherwise be deductible. While in Boston, F and F's spouse go out to dinner. Under section 274(m)(3) and paragraph (a)(4)(iii) of this section, the expenses associated with the food and beverages consumed by F's spouse are not deductible. Therefore, the cost of F's spouse's dinner is not deductible. F may deduct 50 percent of the expense associated with the food and beverages F consumed while on business travel if F meets the requirements in sections 162 and 274, including section 274(k) and (d).

(2) [Reserved]

(b) *Definitions.* Except as otherwise provided in this section, the following definitions apply for purposes of section 274(k) and (n), § 1.274-11(b)(1)(ii) and (d), and this section:

(1) *Food or beverages.* *Food or beverages* means all food and beverage items, regardless of whether characterized as meals, snacks, or other types of food and beverages, and regardless of whether the food and beverages are treated as *de minimis* fringes under section 132(e).

(2) *Food or beverage expenses.* *Food or beverage expenses* mean the full cost of food or beverages, including any delivery fees, tips, and sales tax. In the case of employer-provided meals furnished at an eating facility on the employer's business premises, *food or beverage expenses* do not include

expenses for the operation of the eating facility such as salaries of employees preparing and serving meals and other overhead costs.

(3) *Business associate. Business associate* means a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective.

(4) *Independent contractor.* For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, *independent contractor* means a person who is not an employee of the payor.

(5) *Client or customer.* For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, *client* or *customer* of an independent contractor means a person who receives services from an independent contractor and enters into a reimbursement or other expense allowance arrangement with the independent contractor.

(6) *Payor.* For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, *payor* means a person that enters into a reimbursement or other expense allowance arrangement with an employee and may include an employer, its agent, or a third party.

(7) *Reimbursement or other expense allowance arrangement.* For purposes of the reimbursement or other expense allowance arrangements described in paragraph (c)(2)(ii) of this section, *reimbursement or other expense allowance arrangement* means—

(i) For purposes of paragraph (c)(2)(ii)(B) of this section, an arrangement under which an employee receives an advance, allowance, or reimbursement from a payor for expenses the employee pays or incurs; and

(ii) For purposes of paragraph (c)(2)(ii)(C) of this section, an arrangement under which an independent contractor receives an advance, allowance, or reimbursement from a client or customer for expenses the independent contractor pays or incurs if either—

(A) A written agreement between the parties expressly states that the client or customer will reimburse the independent contractor for expenses that are subject to the limitations on deductions described in paragraph (a) of this section; or

(B) A written agreement between the parties expressly identifies the party subject to the limitations.

(8) *Primarily consumed.* For purposes of paragraph (c)(2)(iv) of this section, *primarily consumed* means greater than 50 percent of actual or reasonably estimated consumption.

(9) *General public.* For purposes of paragraph (c)(2)(iv) of this section, the *general public* includes, but is not limited to, customers, clients, and visitors. The *general public* does not include employees, partners, 2-percent shareholders of S corporations (as defined in section 1372(b)), or independent contractors of the taxpayer. Also, the guests on an exclusive list of guests are not the *general public*.

(c) *Exceptions—(1) In general.* The limitations on the deduction of food or beverage expenses in paragraph (a) of this section do not apply to any expense described in paragraph (c)(2) of this section. These expenses are deductible to the extent allowable under chapter 1 of the Code (chapter 1).

(2) *Exceptions—(i) Expenses treated as compensation—(A) Expenses includible in income of persons who are employees and are not specified individuals.* In accordance with section 274(e)(2)(A), and except as provided in paragraph (c)(2)(i)(D) of this section, an expense paid or incurred by a taxpayer for food or beverages, if an employee who is not a specified individual is the recipient of the food or beverages, is not subject to the deduction limitations in paragraph (a) of this section to the extent that the taxpayer—

(1) Properly treats the expense relating to the recipient of food or beverages as compensation to an employee under chapter 1 and as wages to the employee for purposes of chapter 24 of the Code (chapter 24); and

(2) Treats the proper amount as compensation to the employee under § 1.61–21.

(B) *Expenses includible in income of persons who are not employees and are not specified individuals.* In accordance with section 274(e)(9), and except as provided in paragraph (c)(2)(i)(D) of this section, an expense paid or incurred by a taxpayer for food or beverages is not subject to the deduction limitations in paragraph (a) of this section to the extent that the expenses are properly included in income as compensation for services rendered by, or as a prize or award under section 74 to, a recipient of the expense who is not an employee of the taxpayer and is not a specified individual. The preceding sentence does not apply to any amount paid or incurred by the taxpayer if the amount is required to be included, or would be

so required except that the amount is less than \$600, in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of the Code and is not so included.

(C) *Specified Individuals.* In accordance with section 274(e)(2)(B), in the case of a specified individual (as defined in section 274(e)(2)(B)(ii)), the deduction limitations in paragraph (a) of this section do not apply to an expense for food or beverages of the specified individual to the extent that the amount of the expense does not exceed the sum of—

(1) The amount treated as compensation to the specified individual under chapter 1 and as wages to the specified individual for purposes of chapter 24 (if the specified individual is an employee) or as compensation for services rendered by, or as a prize or award under section 74 to, a recipient of the expense (if the specified individual is not an employee); and

(2) Any amount the specified individual reimburses the taxpayer.

(D) *Expenses for which an amount is excluded from income or is less than the proper amount.* Notwithstanding paragraphs (c)(2)(i)(A) and (B) of this section, in the case of an expense paid or incurred by a taxpayer for food or beverages for which an amount is wholly or partially excluded from a recipients' income under any section of subtitle A of the Code (other than because the amount is reimbursed by the recipient), or for which an amount included in compensation and wages to an employee (or as income to a nonemployee) is less than the amount required to be included under § 1.61–21, the deduction limitations in paragraph (a) of this section do not apply to the extent that the amount of the expense does not exceed the sum of—

(1) The amount treated as compensation to the employee under chapter 1 (or as income to a nonemployee) and as wages to the employee for purposes of chapter 24; and

(2) Any amount the recipient reimburses the taxpayer.

(E) *Examples.* The following examples illustrate the application of paragraph (c)(2)(i) of this section. In each example, assume that the food or beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1) *Example 1.* Employer G provides food and beverages to its non-specified individual employees without charge at a company cafeteria on its premises. The food and beverages do not meet the definition of a *de minimis* fringe under

section 132(e). Thus, G treats the full fair market value of the food and beverage expenses as compensation and wages, and properly determines this amount under § 1.61–21. Under section 274(e)(2) and paragraph (c)(2)(i)(A) of this section, the expenses associated with the food and beverages provided to the employees are not subject to the 50 percent deduction limitation in paragraph (a) of this section. Thus, G may deduct 100 percent of the food and beverage expenses.

(2) *Example 2.* The facts are the same as in paragraph (c)(2)(i)(E)(1) of this section (*Example 1*), except that each employee pays \$8 per day for the food and beverages. The fair market value of the food and beverages is \$10 per day, per employee. G incurs \$9 per day, per employee for the food and beverages. G treats the food and beverage expenses as compensation and wages, and properly determines the amount of the inclusion under § 1.61–21 to be \$2 per day, per employee (\$10 fair market value – \$8 reimbursed by the employee = \$2). Therefore, under paragraph (c)(2)(i)(A) of this section, G may deduct 100 percent of the food and beverage expenses, or \$9 per day, per employee.

(3) *Example 3.* Employer H provides meals to its employees without charge. The meals are properly excluded from the employees' income under section 119 as meals provided for the convenience of the employer. Under § 1.61–21(b)(1), an employee must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of the amount, if any, paid for the benefit by or on behalf of the recipient, and the amount, if any, specifically excluded from gross income by some other section of subtitle A of the Code. Because the entire value of the employees' meals is excluded from the employees' income under section 119, the fair market value of the fringe benefit does not exceed the amount excluded from gross income under subtitle A of the Code, so there is nothing to be included in the employees' income under § 1.61–21. Thus, the exception in section 274(e)(2) and paragraph (c)(2)(i) of this section does not apply and, assuming no other exceptions provided under section 274(n)(2) and paragraph (c)(2) of this section apply, H may deduct only 50 percent of the expenses for the food and beverages provided to employees. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(ii) *Reimbursed food or beverage expenses—(A) In general.* In accordance

with section 274(e)(3), in the case of expenses for food or beverages paid or incurred by one person in connection with the performance of services for another person, whether or not the other person is an employer, under a reimbursement or other expense allowance arrangement, the deduction limitations in paragraph (a) of this section apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both. If an expense of a type described in paragraph (c)(2)(ii) of this section properly constitutes a dividend paid to a shareholder, unreasonable compensation paid to an employee, a personal expense, or other nondeductible expense, nothing in this exception prevents disallowance of the deduction to the taxpayer under other provisions of the Code.

(B) *Reimbursement arrangements involving employees.* In the case of expenses paid or incurred by an employee for food or beverages in performing services as an employee under a reimbursement or other expense allowance arrangement with a payor, the limitations on deductions in paragraph (a) of this section apply—

(1) To the employee to the extent the employer treats the reimbursement or other payment of the expense on the employer's income tax return as originally filed as compensation paid to the employee and as wages to the employee for purposes of withholding under chapter 24 relating to collection of income tax at source on wages; or

(2) To the payor to the extent the reimbursement or other payment of the expense is not treated as compensation and wages paid to the employee in the manner provided in paragraph (c)(2)(ii)(B)(1) of this section. However, see paragraph (c)(2)(ii)(C) of this section if the payor receives a payment from a third party that may be treated as a reimbursement arrangement under that paragraph.

(C) *Reimbursement arrangements involving persons that are not employees.* In the case of expenses for food or beverages paid or incurred by an independent contractor in connection with the performance of services for a client or customer under a reimbursement or other expense allowance arrangement with the independent contractor, the limitations on deductions in paragraph (a) of this section apply to the party expressly identified in an agreement between the parties as subject to the limitations. If an agreement between the parties does not expressly identify the party subject to the limitations, then the deduction

limitations in paragraph (a) of this section apply—

(1) To the independent contractor (which may be a payor) to the extent the independent contractor does not account to the client or customer within the meaning of section 274(d); or

(2) To the client or customer if the independent contractor accounts to the client or customer within the meaning of section 274(d).

(D) *Section 274(d) substantiation.* If the reimbursement or other expense allowance arrangement involves persons who are not employees and the agreement between the parties does not expressly identify the party subject to the limitations on deductions in paragraph (a) of this section, the limitations on deductions in paragraph (a) of this section apply to the independent contractor unless the independent contractor accounts to the client or customer with substantiation that satisfies the requirements of section 274(d).

(E) *Examples.* The following examples illustrate the application of paragraph (c)(2)(ii) of this section.

(1) *Example 1.* (i) Employee I performs services under an arrangement in which J, an employee leasing company, pays I a per diem allowance of \$10x for each day that I performs services for J's client, K, while traveling away from home. The per diem allowance is a reimbursement of travel expenses for food or beverages that I pays in performing services as an employee. J enters into a written agreement with K under which K agrees to reimburse J for any substantiated reimbursements for travel expenses, including meal expenses, that J pays to I. The agreement does not expressly identify the party that is subject to the limitations on deductions in paragraph (a) of this section. I performs services for K while traveling away from home for 10 days and provides J with substantiation that satisfies the requirements of section 274(d) of \$100x of meal expenses incurred by I while traveling away from home. J pays I \$100x to reimburse those expenses pursuant to their arrangement. J delivers a copy of I's substantiation to K. K pays J \$300x, which includes \$200x compensation for services and \$100x as reimbursement of J's payment of I's travel expenses for meals. Neither J nor K treats the \$100x paid to I as compensation or wages.

(ii) Under paragraph (b)(7)(i) of this section, I and J have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(B) of this section. Because the reimbursement payment is

not treated as compensation and wages paid to I, under section 274(e)(3)(A) and paragraph (c)(2)(ii)(B)(1) of this section, I is not subject to the limitations on deductions in paragraph (a) of this section. Instead, under paragraph (c)(2)(ii)(B)(2) of this section, J, the payor, is subject to limitations on deductions in paragraph (a) of this section unless J can meet the requirements of section 274(e)(3)(B) and paragraph (c)(2)(ii)(C) of this section.

(iii) Because the agreement between J and K expressly states that K will reimburse J for substantiated reimbursements for travel expenses that J pays to I, under paragraph (b)(7)(ii)(A) of this section, J and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. J accounts to K for K's reimbursement in the manner required by section 274(d) by delivering to K a copy of the substantiation J received from I. Therefore, under section 274(e)(3)(B) and paragraph (c)(2)(ii)(C)(2) of this section, K and not J is subject to the deduction limitations in paragraph (a) of this section.

(2) *Example 2.* (i) The facts are the same as in paragraph (c)(2)(ii)(E)(1) of this section (*Example 1*) except that, under the arrangements between I and J and between J and K, I provides the substantiation of the expenses directly to K, and K pays the per diem directly to I.

(ii) Under paragraph (b)(7)(i) of this section, I and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. Because I substantiates directly to K and the reimbursement payment was not treated as compensation and wages paid to I, under section 274(e)(3)(A) and paragraph (c)(2)(ii)(C)(1) of this section, I is not subject to the limitations on deductions in paragraph (a) of this section. Under paragraph (c)(2)(ii)(C)(2) of this section, K, the payor, is subject to the limitations on deductions in paragraph (a) of this section.

(3) *Example 3.* (i) The facts are the same as in paragraph (c)(2)(ii)(E)(1) of this section (*Example 1*), except that the written agreement between J and K expressly provides that the limitations of this section will apply to K.

(ii) Under paragraph (b)(7)(ii)(B) of this section, J and K have established a reimbursement or other expense allowance arrangement for purposes of paragraph (c)(2)(ii)(C) of this section. Because the agreement provides that the 274 deduction limitations apply to K, under section 274(e)(3)(B) and paragraph (c)(2)(ii)(C) of this section, K

and not J is subject to the limitations on deductions in paragraph (a) of this section.

(4) *Example 4.* (i) The facts are the same as in (c)(2)(ii)(E)(1) of this section (*Example 1*), except that the agreement between J and K does not provide that K will reimburse J for travel expenses.

(ii) The arrangement between J and K is not a reimbursement or other expense allowance arrangement within the meaning of section 274(e)(3)(B) and paragraph (b)(7)(ii) of this section. Therefore, even though J accounts to K for the expenses, J is subject to the limitations on deductions in paragraph (a) of this section.

(iii) *Recreational expenses for employees—(A) In general.* In accordance with section 274(e)(4), any food or beverage expense paid or incurred by a taxpayer for a recreational, social, or similar activity, primarily for the benefit of a taxpayer's employees (other than employees who are highly compensated employees (within the meaning of section 414(q))) is not subject to the deduction limitations in paragraph (a) of this section. For purposes of this paragraph (c)(2)(iii), an employee owning less than a 10-percent interest in the taxpayer's trade or business is not considered a shareholder or other owner, and for such purposes an employee is treated as owning any interest owned by a member of the employee's family (within the meaning of section 267(c)(4)). Any expense for food or beverages that is made under circumstances which discriminate in favor of highly compensated employees is not considered to be made primarily for the benefit of employees generally. An expense for food or beverages is not to be considered outside of the exception of this paragraph (c)(2)(iii) merely because, due to the large number of employees involved, the provision of food or beverages is intended to benefit only a limited number of employees at one time, provided the provision of food or beverages does not discriminate in favor of highly compensated employees. This exception applies to expenses paid or incurred for events such as holiday parties, annual picnics, or summer outings. This exception does not apply to expenses for meals the value of which is excluded from employees' income under section 119 because the meals are provided for the convenience of the employer and are therefore not primarily for the benefit of the taxpayer's employees.

(B) *Examples.* The following examples illustrate the application of this paragraph (c)(2)(iii). In each example, assume that the food or beverage expenses are ordinary and

necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1) *Example 1.* Employer L invites all employees to a holiday party in a hotel ballroom that includes a buffet dinner and an open bar. Under section 274(e)(4), this paragraph (c)(2)(iii), and § 1.274-11(c), the cost of the party, including food and beverage expenses, is not subject to the deduction limitations in paragraph (a) of this section because the holiday party is a recreational, social, or similar activity primarily for the benefit of non-highly compensated employees. Thus, L may deduct 100 percent of the cost of the party.

(2) *Example 2.* The facts are the same as in paragraph (c)(2)(iii)(B)(1) of this section (*Example 1*), except that Employer L invites only highly-compensated employees to the holiday party, and the invoice provided by the hotel lists the costs for food and beverages separately from the cost of the rental of the ballroom. The costs reflect the venue's usual selling price for food or beverages. The exception in this paragraph (c)(2)(iii) does not apply to the rental of the ballroom or the food and beverage expenses because L invited only highly-compensated employees to the holiday party. However, under § 1.274-11(b)(1)(ii), the food and beverage expenses are not treated as entertainment. Therefore, L is not subject to the full disallowance for its separately stated food and beverage expense under section 274(a)(1) and § 1.274-11(a). Unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, L may deduct only 50 percent of the food and beverage costs under paragraph (a)(2) of this section. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(3) *Example 3.* Employer M provides free coffee, soda, bottled water, chips, donuts, and other snacks in a break room available to all employees. A break room is not a recreational, social, or similar activity primarily for the benefit of the employees, even if some socializing related to the food and beverages provided occurs. Thus, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply and unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, M may deduct only 50 percent of the expenses for food and beverages provided in the break room under paragraph (a)(2) of this section. In addition, the limitations in section

274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(4) *Example 4.* Employer N has a written policy that employees in a certain medical services-related position must be available for emergency calls due to the nature of the position that requires frequent emergency responses. Because these emergencies can and do occur during meal periods, N furnishes food and beverages to employees in this position without charge in a cafeteria on N's premises. N excludes food and beverage expenses from the employees' income as meals provided for the convenience of the employer excludable under section 119. Because these food and beverages are furnished for the employer's convenience, and therefore are not primarily for the benefit of the employees, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply, even if some socializing related to the food and beverages provided occurs. Further, the exception in section 274(e)(2) and paragraph (c)(2)(i) of this section does not apply. Thus, unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, N may deduct only 50 percent of the expenses for food and beverages provided to employees in the cafeteria under paragraph (a)(2) of this section. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(5) *Example 5.* Employer O invites an employee and a client to dinner at a restaurant. Because it is the birthday of the employee, O orders a special dessert in celebration. Because the meal is a business meal, and therefore not primarily for the benefit of the employee, the exception in section 274(e)(4) and this paragraph (c)(2)(iii) does not apply, even though an employee social activity in the form of a birthday celebration occurred during the meal. Thus, unless another exception in section 274(n)(2) and paragraph (c)(2) of this section applies, O may deduct only 50 percent of the meal expense. In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply because none of the exceptions in section 274(k)(2) and paragraph (c)(2) of this section apply.

(iv) *Items available to the public—(A) In general.* In accordance with section 274(e)(7), any expense paid or incurred by a taxpayer for food or beverages to the extent the food or beverages are made available to the general public is not subject to the deduction limitations

in paragraph (a) of this section. If a taxpayer provides food or beverages to employees, this exception applies to the entire amount of expenses for those food or beverages if the same type of food or beverages is provided to, and are primarily consumed by, the general public.

(B) *Examples.* The following examples illustrate the application of this paragraph (c)(2)(iv). In each example, assume that the food and beverage expenses are ordinary and necessary expenses under section 162(a) that are paid or incurred during the taxable year in carrying on a trade or business.

(1) *Example 1.* Employer P is a real estate agent and provides refreshments at an open house for a home available for sale to the public. The refreshments are consumed by P's employees, potential buyers of the property, and other real estate agents. Under section 274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the refreshments are not subject to the deduction limitations in paragraph (a) of this section if P determines that over 50 percent of the food and beverages are actually or reasonably estimated to be consumed by potential buyers and other real estate agents. If more than 50 percent of the food and beverages are not actually or reasonably estimated to be consumed by the general public, only the costs attributable to the food and beverages provided to the general public are excepted under section 274(e)(7) and this paragraph (c)(2)(iv). In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply to the expenses associated with the refreshments that are not excepted under section 274(e)(7) and this paragraph (c)(2)(iv).

(2) *Example 2.* Employer Q is an automobile service center and provides refreshments in its waiting area. The refreshments are consumed by Q's employees and customers, and Q reasonably estimates that more than 50 percent of the refreshments are consumed by customers. Under section 274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the refreshments are not subject to the deduction limitations provided for in paragraph (a) of this section because the food and beverages are primarily consumed by customers. Thus, Q may deduct 100 percent of the food and beverage expenses.

(3) *Example 3.* Employer R operates a summer camp open to the general public for children and provides breakfast and lunch, as part of the fee to attend camp, both to camp counselors, who are employees, and to camp

attendees, who are customers. There are 20 camp counselors and 100 camp attendees. The same type of meal is available to each counselor and attendee, and attendees consume more than 50 percent of the food and beverages. Under section 274(e)(7) and this paragraph (c)(2)(iv), the expenses associated with the food and beverages are not subject to the deduction limitations in paragraph (a) of this section, because over 50 percent of the food and beverages are consumed by camp attendees and the food and beverages are therefore primarily consumed by the general public. Thus, R may deduct 100 percent of the food and beverage expenses.

(4) *Example 4.* Employer S provides food and beverages to its employees without charge at a company cafeteria on its premises. Occasionally, customers or other visitors also eat without charge in the cafeteria. The occasional consumption of food and beverages at the company cafeteria by customers and visitors is less than 50 percent of the total amount of food and beverages consumed at the cafeteria. Therefore, the food and beverages are not primarily consumed by the general public, and only the costs attributable to the food and beverages provided to the general public are excepted under section 274(e)(7) and this paragraph (c)(2)(iv). In addition, the limitations in section 274(k)(1) and paragraph (a)(1) of this section apply to the expenses associated with the food and beverages that are not excepted under section 274(e)(7) and this paragraph (c)(2)(iv).

(v) *Goods or services sold to customers—(A) In general.* In accordance with section 274(e)(8), an expense paid or incurred for food or beverages, to the extent the food or beverages are sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth, is not subject to the deduction limitations in paragraph (a) of this section. However, *money or money's worth* does not include payment through services provided. Under this paragraph (c)(2)(v), a restaurant or catering business may deduct 100 percent of its costs for food or beverage items, purchased in connection with preparing and providing meals to its paying customers, which are also consumed at the worksite by employees who work in the employer's restaurant or catering business. In addition, for purposes of this paragraph (c)(2)(v), the term *customer* includes anyone, including an employee of the taxpayer, who is sold food or beverages in a bona fide transaction for an adequate and full

consideration in money or money's worth.

(B) *Example.* The following example illustrates the application of this paragraph (c)(2)(v):

Example. Employer T operates a restaurant. T provides food and beverages to its food service employees before, during, and after their shifts for no consideration. Under section 274(e)(8) and this paragraph (c)(2)(v), the expenses associated with the food and beverages provided to the employees are not subject to the 50 percent deduction limitation in paragraph (a) of this section because the restaurant sells food and beverages to customers in a bona fide transaction for an adequate and full consideration in money or money's worth. Thus, T may deduct 100 percent of the food and beverage expenses.

(d) *Applicability date.* This section applies for taxable years that begin on or after October 9, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 25, 2020.

David J. Kauter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9902]

RIN 1545-BP15

Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9902, which was published in the **Federal Register** on Thursday, July 23, 2020. Treasury Decision 9902 contained final regulations under the global intangible low-taxed income and subpart F income provisions of the Internal Revenue Code regarding the treatment of income that is subject to a high rate of foreign tax.

DATES: This correction is effective on October 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Jorge M. Oben or Larry R. Pounders at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9902) that are the subject of this correction are issued under section 951A of the Code.

Need for Correction

As published, the final regulations (TD 9902) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.951A-2 is amended by adding a sentence at the end of paragraph (c)(7)(viii)(E)(2)(ii) to read as follows:

§ 1.951A-2 Tested income and tested loss.

* * * * *

(c) * * *

(7) * * *

(viii) * * *

(E) * * *

(2) * * *

(ii) * * * Notwithstanding the rule

set forth in this paragraph (c)(7)(viii)(E)(2)(ii), a controlled foreign corporation is not a member of a CFC group if, as of the close of its CFC inclusion year, the controlled foreign corporation does not have a controlling domestic shareholder.

Crystal Pemberton,

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

[FR Doc. 2020-20419 Filed 10-8-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AQ64

Disclosure of Certain Protected Records Without Written Consent

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final with no

changes, a proposed rule amending its regulations on disclosure of certain records. Recent changes in law, to include the VA MISSION Act of 2018, now authorize VA to disclose certain protected records to non-VA entities for purposes of providing health care or performing other health care-related activities or functions to include recovering or collecting reasonable charges for care furnished.

DATES: The final rule is effective November 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Stephania H. Griffin, Director, Information Access and Privacy Office (10A7), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (704) 245-2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

In accordance with section 5701 of title 38 United States Code (U.S.C.), records and files maintained by VA on veterans and beneficiaries, including medical records, are generally confidential, and VA may not disclose or release these materials except as provided by law. Moreover, records of the identity, diagnosis, prognosis, or treatment by or for VA of any patient related to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia as prescribed by 38 U.S.C. 7332(a)(1) are confidential and subject to special protection against disclosure. These records may only be disclosed for the specific purposes and under the circumstances expressly authorized under 38 U.S.C. 7332(b), where section (b)(1) authorizes disclosure with the prior written consent of the patient to the extent, circumstances, and purposes allowed by VA regulations, and section (b)(2) authorizes disclosure under certain circumstances with or without the written consent of the patient.

Section 3 of Public Law (Pub. L.) 115-26 (April 19, 2017) amended 38 U.S.C. 7332 by adding a new paragraph (b)(2)(H), authorizing disclosure of 7332-protected records without the written consent of the patient or subject of the record to a non-VA entity (including private entities and other Federal agencies) that provides VA-authorized hospital care or medical services to veterans. It also provided that any non-VA entity receiving such records may not redisclose or use those records for a purpose other than that for which the disclosure was made.

Subsequently, section 132 of Public Law 115-182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside

Networks Act of 2018, or the VA MISSION Act of 2018 (June 6, 2018) amended 38 U.S.C. 7332(b)(2) by striking paragraph (H) and inserting new paragraphs (H) and (I). Paragraph (H)(i) authorizes disclosure of 7332-protected records without the written consent of the patient to a non-VA entity (including private entities and other Federal agencies) for purposes of providing health care, including hospital care, medical services, and extended care services to patients or performing other health care-related activities or functions. Thus, the scope of permissible disclosures of 7332-protected records was expanded from non-VA entities providing hospital care or medical services authorized by the VA to non-VA entities providing health care or other health care-related activities or functions. Further, paragraph (H)(ii) was amended in 2017 to provide that any entity to which a record is disclosed under this paragraph may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law. The amendment under the MISSION Act replaced the term redisclose with the term disclose and added that entities who receive 7332-protected records may also make disclosures as permitted by law. Additionally, paragraph (I) was added to authorize disclosure to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by section 1729 of this title, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act.

VA has published regulations implementing release of information from VA records protected by one or more confidentiality provisions in 38 CFR part 1. General rules on release of information related to alcohol or other drug use disorder, HIV infection, or sickle cell anemia are at 38 CFR 1.460 through 1.469. In particular, § 1.460 contains the definitions for §§ 1.460 through 1.499 of this part. Disclosure with patient consent is addressed in §§ 1.475 through 1.479, while disclosures that do not require patient consent are addressed in §§ 1.483 through 1.489. The focus of §§ 1.490 through 1.499 is release of information in response to a court order.

In a document published in the **Federal Register** on December 13, 2019 (84 FR 68065), VA proposed, among other things, to amend part 1 to conform to these statutory changes by adding the

terms health care and health care related activities or functions to § 1.460; and adding two new sections at 38 CFR 1.481 and 1.482 titled Disclosure of medical records of veterans who receive non-VA health care, and Disclosure of medical records to recover or collect reasonable charges, respectively. Furthermore, we proposed a technical correction to §§ 1.460 through 1.499 by moving the authority citations for these sections and moving them to the beginning of part 1 to comply with the Office of Federal Register direction that statutory authorities should be listed in the introductory portion of each CFR part.

VA provided a 60-day comment period that ended on February 11, 2020, and we received two comments. The first comment stated that VA should obtain permission from veterans and that every effort should be made to contact a veteran's family for the release of records if the veteran is deceased (we note that, although the comment used the word *decided*, based on the content of the comment, we believe that the intended word was *deceased*). To address the first portion of the comment related to obtaining permission from veterans, as previously explained, section 3 of Public Law 115–26 and section 132 of the VA MISSION Act of 2018, amended 38 U.S.C. 7332(b)(2) by allowing VA to disclose certain protected records to non-VA entities (including private entities and other Federal agencies) for purposes of providing health care or performing other health care-related activities or functions. Also, VA may disclose these protected records to a third party for the purpose of recovering or collecting reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability or to which the United States is deemed to be a third-party beneficiary. Therefore, VA may now disclose certain protected records with or without consent for the aforementioned reasons. Also, adding a consent mandate to the regulation would negate the intent of the statutory amendment. To address the portion of the comment related to the records of a deceased individual, such records continue to be protected under 38 U.S.C. 7332; however, we note that over time, certain disclosures (e.g., disclosures to a provider for treatment purposes, disclosures to a third-party to recover or collect reasonable charges) would no longer be made for a deceased individual because the deceased individual would no longer receive treatment. Furthermore, the family

members of a deceased individual cannot consent to a disclosure unless such disclosure is necessary to obtain benefits to which the family member may be entitled. 38 U.S.C. 7332(b)(3). We are not making any changes based on this comment.

The second comment raised multiple concerns and recommendations regarding: (1) Definition for treatment and health care; (2) external treatment records; (3) restriction requests; and (4) the Privacy Act of 1974 (the Privacy Act)).

1. Definition for treatment and health care. The comment asked why VA would use the same definition for treatment and health care as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. We proposed to use treatment as defined by 45 CFR 164.501 as part of our proposed definition for the term health care-related activities or functions. VA has chosen to use the same definition for treatment to maintain consistency with the HIPAA Privacy Rule. Likewise, we have chosen to define health care to have the same meaning as defined in the HIPAA Privacy Rule and to align with industry standard and practice. Therefore, we believe it is reasonable to maintain consistency with HIPAA to allow community providers to rely on the same definition when using and disclosing VA records, and we are not making any changes based on this portion of the comment.

2. External treatment records. The comment expressed concern regarding the creation of external treatment records when VA refers veterans to community providers, and further asked VA to revise § 1.481(b) as proposed to include, at the end, a phrase that reads including via any health information exchange or organization. When VA refers patients to community providers for treatment, those community providers create their own treatment records and VA does not have the authority to restrict the records created and owned by an external entity. However, if VA provides a copy of VA medical records to a community provider then VA may restrict the use of the medical record provided and the language proposed in 1.481(b) provides this restriction by stating that an entity to which a record is disclosed under this section may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law. This language is consistent with our authorizing statute under 38 U.S.C. 7332(b)(2)(H)(i) and we do not believe it is necessary to add the additional phrase as suggested by the

commenter because the restriction that is already present in § 1.418(b) as proposed captures all entity types to include health information exchanges or organizations when applicable. We are not making any changes based on this portion of the comment.

3. Restriction requests. The comment raised a concern that the proposed rule did not address requests for restrictions on the disclosure of medical records under the HIPAA Privacy Rule, and specifically, restrictions with regard to information sharing through a health information exchange. The comment addressed both the issues of restriction on the use and disclosure of protected health information, and the means under which protected health information is shared. To address both issues raised in the comment, we first note that the purpose of the proposed rule and this final rule is to align VA's regulations with recent changes in law that now authorize VA to disclose 7332-protected records to a third party for the purpose of providing health care or performing other health care-related activities or functions, and to a third party for the purpose of recovering or collecting reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability or to which the United States is deemed to be a third-party beneficiary. This authority does not negate an individual's ability to request a restriction on the use and disclosure of their protected health information under 45 CFR 164.522, nor does it negate VA's obligation to uphold a request if VA agrees to a restriction. We note that under the HIPAA Privacy Rule, VA may still use or disclose restricted protected health information for emergency treatment. 45 CFR 164.522(a)(1)(iii). Additionally, under the HIPAA Privacy Rule a covered entity is not required to agree to a restriction unless the disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law and the protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full. 45 CFR 164.522(a)(1)(ii) and (vi). Thus, this final rule does not affect an individual's ability to request restrictions on the disclosure of medical records. We next clarify this final rule does not impede an individual's ability to opt-out of health information exchanges. VA provides individuals the opportunity to opt-out of sharing protected health information through

health information exchanges (HIE). Therefore, if an individual chooses to opt-out, VA will uphold this request by not sharing protected health information through an HIE. However, protected health information will continue to be shared on paper, fax, or other legally allowed means. We are not making any changes based on this portion of the comment.

4. The Privacy Act. The comment asked if the Privacy Act applies to medical records and whether the routine use exemption applies. We clarify that this rule does not impact protections under the Privacy Act because VA is authorized to disclose 7332-protected records without consent under routine use when such disclosure is authorized by 38 U.S.C. 7332. The Privacy Act requires Federal agencies to not disclose any record which is contained in a system of records . . . without the prior written consent of the individual to whom the record pertains, unless the disclosure of the record would be . . . for routine use. 5 U.S.C. 552a(b) and (b)(3). Routine use, with respect to the disclosure of records, means the use of such record for a purpose which is compatible with the purpose for which it was collected. 5 U.S.C. 552a(a)(7). In accordance with 5 U.S.C. 552a(e), VA publishes a **Federal Register** Notice outlining the routine use disclosures of records from a Privacy Act system of records to a person or entity outside of VA without the prior signed written consent authorization of the individual who is the subject of the information. For example, published routine use disclosure statements in the Privacy Act system of records, "Patient Medical Records-VA", 24VA10P2 permits the release of protected health information when a disclosure is also authorized by other applicable legal authorities, including the HIPAA Privacy Rule; and disclosure of 7332-protected records when the disclosure is also authorized by 38 U.S.C. 7332. Furthermore, this rule aligns VA's regulations with recent changes in our statutory authority under 7332. We are not making any changes based on this portion of the comment.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as final without changes.

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 rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

The final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect health and medical insurance companies, some of which are small entities. VA has determined that this final rule will not have a significant economic impact because VA estimates the cost of this rulemaking to be no more than 1 percent of average annual receipts, and thus not significant. In the proposed rule, VA estimated the cost of this rulemaking to be \$41.7 per year using FY2020 estimates. VA now estimates the cost of this rulemaking to be \$43.8 million per year using FY2021 estimates for health and medical insurance carriers due to an increase in potential revenue received by VA from health and medical insurance firms for billed claims. This \$43.8 million dollars per year will be distributed among 815, of which 312 are small, medical and health insurance firms that provide benefits to veterans treated for non-service connected conditions and whose records are protected under 38 U.S.C. 7332. We are uncertain if any small entity will be impacted so we assume that all small entities will be impacted in addition to large entities. The cost to each of the 312 small entities will be \$53,779 per year, which is 1 percent of average annual receipts for the smallest potentially affected small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of

Information and Regulatory Affairs has determined this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 through FYTD.

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

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.033—VA Supportive Services for Veteran Families Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.054—Research and Development.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy

Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on August 26, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, Department of Veterans Affairs amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

- 1. The authority citation for part 1 is revised to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

Sections 1.460 and 1.461 also issued under 38 U.S.C. 7332 and 7334.

Sections 1.462, 1.464, 1.466–1.469, 1.476, 1.478, 1.479, 1.491–1.493, 1.495 and 1.496 also issued under 38 U.S.C. 7334.

Sections 1.463, 1.465, 1.475, 1.477, 1.481, 1.482, 1.483, 1.485, 1.486–1.490, and 1.494 also issued under 38 U.S.C. 7332.

Section 1.484 also issued under 38 U.S.C. 7331 and 7332.

Section 1.485a also issued under 38 U.S.C. 5701 and 7332.

§§ 1.460 through 1.479 [Amended]

- 2. Remove the parenthetical Authority citation immediately following each section from §§ 1.460 through 1.479.

- 3. Amend § 1.460 by adding, in alphabetical order, definitions for “Health care” and “Health care-related activities or functions” to read as follows:

§ 1.460 Definitions.

* * * * *

Health care. The term “health care” has the same meaning as provided in 45 CFR 160.103.

Health care-related activities or functions. The term “health care-related activities or functions” means the actions required for the delivery of health care, including hospital care, medical services, and extended care services. Health care-related activities or functions includes: Treatment as defined by 45 CFR 164.501; activities related to reimbursement for care and treatment by a health care provider;

activities related to participation in health information exchanges for the delivery of health care; health care operations as defined by 45 CFR 164.501; and activities related to a patient's exercise of privacy rights regarding health information.

* * * * *

- 4. Remove reserved §§ 1.481 and 1.482 from under the undesignated center heading “Disclosures With Patient's Consent” and add new §§ 1.481 and 1.482 under the undesignated center heading “Disclosures Without Patient Consent” to read as follows:

§ 1.481 Disclosure of medical records of veterans who receive non-VA health care.

(a) VA may disclose records referred to in 38 U.S.C. 7332(a) to a non-VA entity (including private entities and other Federal agencies) for purposes of providing health care to patients or performing other health care-related activities or functions.

(b) An entity to which a record is disclosed under this section may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law.

§ 1.482 Disclosure of medical records to recover or collect reasonable charges.

VA may disclose records described in 38 U.S.C. 7332(a) to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by 38 U.S.C. 1729, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act (Public Law 87–693, 42 U.S.C. 2651 *et seq.*).

§§ 1.484 through 1.496 [Amended]

- 5. Remove the parenthetical Authority citation immediately following each section from §§ 1.484 through 1.496.

[FR Doc. 2020–20276 Filed 10–8–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0197; FRL-10014-80-Region 3]

Air Plan Approval; West Virginia; 1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta, WV-OH Area Comprising Wood County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the West Virginia Department of Environmental Protection (WVDEP) of the State of West Virginia. This revision pertains to West Virginia's plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) through June 7, 2027 for the West Virginia portion of the Parkersburg-Marietta, WV-OH Area comprising Wood County. EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 9, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0197. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at pagan-incle.keila@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 6, 2020 (85 FR 40160), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of West Virginia's plan for maintaining the 1997 8-hour ozone NAAQS through June 7, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by WVDEP on December 10, 2019.

II. Summary of SIP Revision and EPA Analysis

On May 8, 2007 (72 FR 25967, effective June 7, 2007), EPA approved a redesignation request (and maintenance plan) from WVDEP for the Parkersburg-Marietta Area. Section 175A(b) of the CAA requires that at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,¹ the D.C. Circuit held that this requirement cannot be waived for areas, like Parkersburg, that had been redesignated to maintenance for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.² WVDEP's December 10, 2019 SIP submittal fulfills West Virginia's obligation to submit a second maintenance plan and adequately addresses each of the five necessary elements.

As discussed in the July 6, 2020 NPRM, consistent with longstanding EPA guidance,³ areas that meet certain

¹ 882 F.3d 1138 (D.C. Cir. 2018).

² "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

³ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate

criteria may be eligible to submit a limited maintenance plan (LMP) to meet the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirement to "provide for maintenance" by demonstrating that an area's design values⁴ are well below the NAAQS and that it has had historical stability attaining the NAAQS. EPA evaluated WVDEP's December 10, 2019 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Parkersburg-Marietta, WV-OH Area comprising Wood County as a revision to the West Virginia SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 8-hour ozone NAAQS Federally enforceable as part of the West Virginia SIP.

Other specific requirements of WVDEP's December 10, 2019 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received three comments on the July 6, 2020 NPRM, only two of which related to air quality issues. All comments received are in the docket for this rulemaking action. A summary of the two comments and EPA's responses are provided herein.

Comment 1: The commenter alleges that the plan should not be approved due to "a well-documented history of excessive emissions, including particulates," in Parker County. The commenter asserts that the concentration of PM₁₀⁵ in Parker County is one of the highest in the nation and that "if there were pollution control measures in place for Parker County, Parker County would be able to meet its air quality standards." In addition, the commenter raises a number of issues related to road improvement plans, including a request for EPA's position on the "Parker County Road Improvement Plan."

Response 1: As stated in the NPRM, the state's submission addresses the Parkersburg-Marietta Area's

PM₁₀ Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

⁴ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

⁵ PM₁₀ is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

maintenance of the 1997 8-hour ozone NAAQS. Therefore, the commenter's concerns about particulate matter pollution and emissions are beyond the scope of this action. Particulate matter is regulated under a separate NAAQS.⁶ Emissions of particulate matter and concentrations of PM₁₀ particulates are not relevant to whether the Parkersburg-Marietta Area continues to attain and has a plan for maintaining the 1997 8-hour ozone NAAQS for an additional 10 years. Similarly, road projects in an unspecified Parker County Road Improvement Plan are not relevant to whether the LMP for the 1997 8-hour ozone NAAQS is approvable. EPA set forth in the NPRM the criteria relevant to approvability of the LMP. EPA has determined that the December 10, 2019 SIP revision includes adequate information to support West Virginia's LMP. As set forth in the NPRM, EPA has determined that the State provided sufficient assurances in the LMP for EPA to approve West Virginia's 1997 8-hour ozone second maintenance plan for the Parkersburg-Marietta Area. EPA's evaluation of the West Virginia's December 10, 2019 SIP revision and the rationale for taking rulemaking action on this submission was discussed in detail in the NPRM. EPA continues to believe that it has considered the correct criteria and that the LMP meets the criteria for approvability. Concerns about particulate matter and road projects raised by the commenter are not relevant with respect to EPA's decision to approve the LMP.

Comment 2: The commenter claims that EPA must disapprove West Virginia's LMP because "the proposed rule will not ensure that the communities in this area will be well served in terms of its electrical needs and its water needs," and "will not address the potential problems with drinking water supplies nor the environmental damage from increased air pollution this plan allows." The commenter alleges that EPA "will not allow" the LMP go into effect without evaluating the impact it could have on the state and communities, because Federal agencies are required under the National Environmental Policy Act (NEPA) to assess impacts from proposed Federal actions on the environment, health and safety. Further the commenter contends that the LMP proposal includes an increase of "the amount of gas extraction that would require pumping water deep underground," which will potentially harm the drinking water supplies in communities, including Parkersburg.

Response 2: The commenter raised several issues with respect to EPA's proposed approval of West Virginia's second 10-year maintenance plan for the Parkersburg-Marietta Area for the 1997 8-hour ozone NAAQS, but EPA disagrees that any of them provide a basis for disapproving the state's submission. The commenter first raises concern about the plan's "failure to ensure that the community will be well served in terms of its electrical needs and its water needs." However, these issues are beyond the scope of EPA's action, which address only CAA requirements for the Parkersburg-Marietta Area with respect to the 1997 8-hour ozone NAAQS. Second, the commenter's allegation that the EPA is required under NEPA to assess the impacts of its maintenance plan approval is incorrect; section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts all EPA actions under the CAA from the requirements of NEPA, and this action is an approval of a SIP under the CAA. Third, the commenter's allegation that "the plan proposes to increase the amount of gas extraction that would require pumping water deep underground" and her concern that the "plan also lacks mitigation measures . . . related to the increased use of water and gas to extract shale gas in the area" appears to be referring to a different action. The SIP submission at issue in this action does not affect in any way gas extraction in West Virginia, much less propose to increase the amount of extraction, and therefore it appropriately does not address mitigation measures related to that subject. Finally, EPA does not agree with the commenter's allegation that the plan allows for increased air pollution. The state's submission maintains the same controls and contingency measures that were adopted into the SIP to attain and maintain the 1997 8-hour ozone NAAQS and any potential future violations of that standard.

As noted in the NPRM, CAA section 175A requires only that the State of West Virginia make adequate demonstration that the Parkersburg-Marietta Area will continue to maintain the 1997 8-hour ozone NAAQS until 2027 (20 years after redesignation). EPA has considered the appropriate statutory criteria and believes the record supports approval of the LMP. Concerns regarding electricity supply and water supply raised by the commenter are not relevant with respect to EPA's decision to approve the LMP.

IV. Final Action

EPA is approving the 1997 8-hour ozone NAAQS second 10-year maintenance plan for the Parkersburg-Marietta, WV-OH Area comprising Wood County as a revision to the West Virginia SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action 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

⁶ See 40 CFR 50.6 and 50.7

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 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 pertaining to West Virginia’s limited maintenance plan for the Parkersburg-Marietta, WV-OH Area comprising Wood County may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 15, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

For the reasons stated in the preamble the EPA amends 40 CFR part 52 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry “1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta WV-OH Area Comprising Wood County” at the end of the table to read as follows:

§ 52.2520 Identification of plan.

*	*	*	*	*
(e) * * *				

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * 1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta, WV-OH Area Comprising Wood County.	* Parkersburg-Marietta WV-OH Area Comprising Wood County.	* 12/10/2019	* 10/9/2020, [insert Federal Register citation].	*

[FR Doc. 2020–20810 Filed 10–8–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2019–0611; FRL–10013–72–OAR]

RIN 2060–AU54

Implementation of the Revoked 1997 8-Hour Ozone National Ambient Air Quality Standards; Updates to 40 CFR Part 52 for Areas That Attained by the Attainment Date

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating part 52 of title 40, chapter 1 of the Code of Federal

Regulations (CFR) to codify its findings that nine areas in four states attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (herein referred to as the 1997 ozone NAAQS) by the applicable attainment dates. In February 2019, EPA Regional Offices sent letters to the affected states to communicate the EPA’s findings. The areas that timely attained the standards include the Buffalo-Niagara Falls area, and the Jefferson County, Poughkeepsie and Jamestown areas in the state of New York; the Shoreline Sheboygan County and Inland Sheboygan County areas in Wisconsin; the Denver-Boulder-Greeley-Ft. Collins-Loveland area in Colorado; and the San Francisco Bay and Ventura County areas in California. Publishing these determinations in part 52 will document for the public and state air agencies that these areas attained the standards by the applicable attainment dates and are therefore not subject to

anti-backsliding consequences for failure to timely attain the standards.

DATES: The direct final rule is effective on January 7, 2021 without further notice unless the EPA receives relevant adverse written comments, or if a public hearing is requested by October 14, 2020, on the proposed rule. In such case, refer to the *General Information* section.

ADDRESSES: The EPA established Docket ID No. EPA–HQ–OAR–2019–0611 for this action. All documents on the docket are listed at <https://www.regulations.gov>. Although listed in the docket index, some information may not be publicly available, *e.g.*, Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Certain other information, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Docket materials are available electronically to the public through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further general information on this direct final rule, contact Ms. Virginia Raps, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C539-01, Research Triangle Park, NC 27711, telephone (919) 541-4383; fax number: (919) 541-5315; email address: raps.virginia@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because the agency views this as a noncontroversial action. The EPA anticipates no adverse comment because this final action codifies the EPA's factual findings that certain areas attained the revoked 1997 ozone NAAQS by the applicable attainment dates. In the "Proposed Rules" section of this **Federal Register**, the EPA is publishing the parallel proposed rule to update part 52. If adverse comments are received on the proposed rule, the EPA will not institute a second comment period on this action. Any parties

interested in commenting on the proposed rule must do so at this time. For further information about commenting on the proposed rule, see the **DATES** and **ADDRESSES** section of the proposed rule.

If the EPA receives relevant adverse comment on all or a distinct portion of the proposed rule, the Agency will publish a timely withdrawal in the **Federal Register**. The withdrawal notice will inform the public of the direct final rule provisions that will become effective and which provisions are being withdrawn. In the event the EPA receives relevant adverse comment on the proposed rule, the EPA will respond in writing to comments and include the written responses in any subsequent final rule based on the proposed rule.

B. Does this action apply to me?

Publishing these determinations in part 52 will document for the public and state air agencies that these areas factually attained the revoked 1997 ozone NAAQS by the applicable attainment dates and are therefore not subject to anti-backsliding consequences for failure to timely attain the standards. The scope of the rule is narrow, and the EPA had previously informed the affected states' air agencies of these determinations by way of letter in February 2019. The direct final rule will not create any new requirements for any affected state. Nonetheless, the public is invited to comment on the proposed rule.

II. Background

On July 18, 1997, the EPA established standards for the 8-hour average ozone concentrations at a level of 0.08 parts per million (ppm)¹ for both the primary and secondary NAAQS² (herein referred to as the 1997 ozone NAAQS).³ Subsequently, the EPA designated areas around the country as either attaining ("attainment") or not attaining ("nonattainment") the 1997 ozone

NAAQS. Effective on June 15, 2004,⁴ the EPA established the nonattainment area designations, classifications, and attainment dates⁵ that applied to the 1997 ozone NAAQS nonattainment areas, and included attainment dates for Early Action Compact (EAC) areas.⁶ The EPA then issued a rule for implementing the 1997 ozone NAAQS that was published in a separate **Federal Register** notice effective on the same date, June 15, 2004.⁷

Four years later, on March 27, 2008, the EPA revised the 8-hour ozone standards to a more protective level of 0.075 ppm for both the primary and secondary standards (herein referred to as the 2008 ozone NAAQS)⁸ and issued implementing regulations for the revised NAAQS (herein referred to as the 2008 ozone SIP Requirements Rule)⁹ in April 2015. In that rule, the EPA revoked the 1997 ozone NAAQS and established requirements to ensure that progress toward clean air in those areas would not "backslide." The EPA also stated that it would no longer make determinations of attainment by the

⁴ See 69 FR 23858, April 30, 2004, "Air Quality Designations and Classifications for the [1997] 8-Hour Ozone NAAQS; Early Action Compact Areas With Deferred Effective Dates," final rule effective June 15, 2004. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2004-04-30/pdf/04-9152.pdf>.

⁵ Ozone nonattainment area attainment dates are specific to the areas' classifications (see 69 FR 23858, 23863, April 30, 2004).

⁶ To achieve clean air as soon as possible, the EPA worked with certain communities that entered into EACs. The goal of these Compacts was to help communities reduce ground-level ozone about 2 years sooner than required by the CAA. Accordingly, the EPA deferred the 1997 ozone NAAQS effective attainment dates for EAC areas. While these areas were violating the 8-hour standard, the EAC areas were continuing to meet compact milestones towards clean air. (see 69 FR 23858, 23865, April 30, 2004)

⁷ See 69 FR 23951, April 30, 2004, "Final Rule to Implement the [1997] 8-Hour Ozone National Ambient Air Quality Standard—Phase 1," final rule effective June 15, 2004. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2004-04-30/pdf/04-9153.pdf>. EPA also issued the "Final Rule To Implement the [1997] 8-Hour Ozone National Ambient Air Quality Standard-Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline," effective January 30, 2006. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2005-11-29/pdf/05-22698.pdf>

⁸ See 73 FR 16436, March 27, 2008, "National Ambient Air Quality Standards for Ozone" final rule effective May 27, 2008. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2008-03-27/pdf/E8-5645.pdf>.

⁹ See 80 FR 12264, March 6, 2015, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" final rule effective April 6, 2015. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2015-03-06/pdf/2015-04012.pdf>.

¹ An area would violate the standard at a level greater than 0.084 ppm because rounding would cause a level of 0.085 ppm to be interpreted as 0.09 ppm, which exceeds the 0.08 ppm standard.

² Primary standards provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Available on the internet at <https://www.epa.gov/criteria-air-pollutants/naqs-table>.

³ See 62 FR 38855, July 18, 1997, "National Ambient Air Quality [1997] Standards for Ozone," final rule effective September 16, 1997. Available on the U.S. Government Publishing Office (GPO) website at <https://www.govinfo.gov/content/pkg/FR-1997-07-18/pdf/97-18580.pdf>.

attainment date except to trigger relevant anti-backsliding obligations, as the designations and classifications for 1997 ozone NAAQS areas were no longer in effect following revocation.

Subsequently, in *South Coast Air Quality Management District v. EPA* (882 F.3d 1138 (D.C. Cir. 2018)) (known as the *South Coast II* decision),¹⁰ the U.S. Circuit Court of Appeals for the District of Columbia vacated, among other things, certain portions of the 2008 ozone SIP Requirements Rule, in part effectively re-establishing a requirement for EPA to reclassify areas

that failed to attain the revoked 1997 ozone NAAQS by the area’s applicable attainment date.¹¹ The EPA does not interpret the *South Coast II* decision to compel the Agency to issue determinations of attainment by the attainment date or to make these updates to part 52 for areas that timely attained the revoked 1997 ozone NAAQS. Rather the EPA views these discretionary actions as helpful to clarify the status of the affected areas after the court decision.

To clarify the status of areas that attained the 1997 ozone NAAQS by the

applicable attainment dates, in February 2019, four EPA Regional Offices issued letters to four states identifying nine areas that had attained the standards by the applicable attainment dates.^{12 13 14 15} The findings were based on certified quality-assured air quality monitoring data from the 3 calendar years preceding the respective attainment dates. This direct final rule updates the regulations at 40 CFR part 52 to reflect these earlier findings. The information contained in the letters is summarized in Table 1,¹⁶ including the design values (DVs) for the applicable attainment dates.¹⁷

TABLE 1—NONATTAINMENT AREAS THAT ATTAINED BY THE ATTAINMENT DATE FOR THE 1997 8-HOUR OZONE NAAQS

EPA region	State	Area name	Applicable attainment date	Attainment year design value (DV)	
				Level	DV years
2	New York	Buffalo-Niagara Falls, NY	June 15, 2010	0.076	2007–2009
2	New York	Jamestown, NY	June 15, 2010	0.079	2007–2009
2	New York	Jefferson County	June 15, 2010	0.074	2007–2009
2	New York	Poughkeepsie, NY	June 15, 2010	0.078	2007–2009
5	Wisconsin ^A	Shoreline Sheboygan County, WI	June 15, 2010	0.079	2007–2009
		Inland Sheboygan County, WI			
8	Colorado	Denver-Boulder-Greeley-Ft. Collins-Loveland, CO.	November 20, 2010	0.078	2007–2009
9	California	San Francisco Bay Area	June 15, 2007	0.080	2004–2006
9	California	Ventura County	June 15, 2013	0.081	2010–2012

^A The separate Inland Sheboygan County, Wisconsin and Shoreline Sheboygan County, Wisconsin, ozone nonattainment areas were originally designated as a single, full-county area named Sheboygan County, Wisconsin, covering the same geographic area. The EPA’s February 8, 2019, finding of attainment by the attainment date for the 1997 ozone NAAQS applied to the original full-county area. On July 15, 2019, the EPA revised the original designation by splitting the full-county 1997 ozone area into two separate and distinct areas (84 FR 33699, July 15, 2019). This change is reflected in 40 CFR 81.350 “Wisconsin.” at <https://www.ecfr.gov/cgi-bin/text-idx?SID=0fd7171e7292313c1acf5280be3bdc6e&mc=true&node=sp40.20.81.c&rgn=div6> (see 84 FR 33699, July 15, 2019, at <https://www.govinfo.gov/content/pkg/FR-2019-07-15/pdf/2019-14990.pdf> and 40 CFR 81.350).

III. Summary of Final Action

This direct final rule updates the regulations at 40 CFR part 52 to reflect the earlier findings of determinations of attainment by the attainment date for the revoked 1997 ozone NAAQS. Publishing these determinations in part 52 will document for the public and state air agencies that these areas attained the standards by the applicable

attainment dates and are therefore not subject to anti-backsliding consequences for failure to timely attain the standards.

IV. Environmental Justice Considerations

This direct final rule requires no environmental justice considerations.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and, therefore, was not

¹⁰ *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (DC Cir. 2018). Available on the Court of Appeals D.C. Circuit website at [https://www.cadc.uscourts.gov/internet/opinions.nsf/217B6778AE3EC89C8525823600532AE0/\\$file/15-1115-1718293.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/217B6778AE3EC89C8525823600532AE0/$file/15-1115-1718293.pdf).

¹¹ Attainment of the standard is established by calculating the 8-hour ozone design values (DVs) using certified quality-assured ozone air quality monitoring data available for the three full calendar years prior to the attainment date applicable to each area, where the standard would be attained at a level less than or equal to 0.084 ppm.

¹² Letter from EPA Region 2, John Filippelli, Director, Clean Air and Sustainability Division, to Jared Snyder, Deputy Commissioner, Air Resources, Climate Change and Energy, New York State Department of Environmental Conservation, dated February 4, 2019.

¹³ Letter from EPA Region 5, Edward Nam, Director, Air and Radiation Division, to Gail Good,

Director, Air Management Program, Wisconsin Department of Natural Resources, dated February 8, 2019.

¹⁴ Letter from EPA Region 8, Monica Morales, Director, Air Program, to Mr. Garry Kaufman, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, dated February 8, 2019.

¹⁵ Letter from EPA Region 9, Elizabeth J. Adams, Director, Air Division, to Richard W. Corey, Executive Officer, California Air Resources Board, dated February 21, 2019.

¹⁶ The areas’ names listed in Table 1 are presented as they were when the areas were designated nonattainment in EPA’s rule for implementing the 1997 ozone NAAQS effective on June 15, 2004. On July 15, 2019, the EPA split the Sheboygan County ozone area into two parts, identified as the Inland Sheboygan County, Wisconsin, and the Shoreline Sheboygan County, Wisconsin, areas.

¹⁷ Concerning the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, area as a former EAC area, see 77 FR 28424, May 14, 2012. “Final Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Classification of Areas That Were Initially Classified Under Subpart 1; Revision of the Anti-Backsliding Provisions To Address 1-Hour Contingency Measure Requirements; Deletion of Obsolete 1-Hour Ozone Standard Provision,” effective date June 13, 2012; see footnote 4 on page 28426 of that notice. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2012-05-14/pdf/2012-11232.pdf#page=2>. See also, 69 FR 23858, April 30, 2004, “Air Quality Designations and Classifications for the [1997] 8-Hour Ozone NAAQS; Early Action Compact Areas With Deferred Effective Dates,” final rule effective June 15, 2004. Available on the U.S. GPO website at <https://www.govinfo.gov/content/pkg/FR-2004-04-30/pdf/04-9152.pdf>.

submitted to the Office of Management and Budget for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538.¹⁸ The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory

action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (see 59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section IV of this document titled, “Environmental Justice Considerations.”

L. Congressional Review Act (CRA)

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).

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of final actions that are locally and regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit by December 8, 2020. However, the statute also provides that notwithstanding that general rule, “a petition for review of any action . . . may be filed only in the United States Court of Appeals for the District of

Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” Because this final action makes findings regarding the attainment status of areas across the country, in multiple EPA regions and within the jurisdictions over multiple U.S. Circuit Courts of Appeal, the Administrator finds that this action has nationwide scope and effect. Therefore, in accordance with CAA section 307(b)(1), petitions for review of this final action may be filed only in the United States Court of Appeals for the District of Columbia Circuit. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings for enforcement.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

Andrew Wheeler,
Administrator.

For the reasons stated in the preamble, part 52, title 40, chapter 1 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.282 is amended by adding paragraph (l) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(l) *Determination of attainment by the attainment date.* Effective December 8, 2020, the EPA determined that the San Francisco Bay, CA, Marginal ozone nonattainment area attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2007. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2004–2006. Further, the EPA determined that the Ventura County, CA, Serious ozone nonattainment area

¹⁸ U.S.C. is United States Code.

attained the standards for the revoked 1997 8-hour NAAQS by the applicable attainment date of June 15, 2013. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2010–2012. Under the provisions of the EPA’s ozone implementation rule, these determinations suspend the applicable requirements under 40 CFR 51.900(f) and those listed under Clean Air Act sections 172(c) and 182.

Subpart G—Colorado

■ 3. Section 52.350 is amended by adding paragraph (d) to read as follows:

§ 52.350 Control strategy: Ozone.

* * * * *

(d) *Determination of attainment by the attainment date.* Effective December 8, 2020, the EPA determined the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, Marginal ozone nonattainment area attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 20, 2010. The determination was based upon complete quality-assured and certified data for the three calendar years 2007–2009. Under the provisions of the EPA’s ozone implementation rule, this determination suspends the applicable requirements under 40 CFR 51.900(f) and those listed under Clean Air Act sections 172(c) and 182.

Subpart HH—New York

■ 4. Section 52.1683 is amended by adding paragraph (s) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(s) *Determination of attainment by the attainment date.* Effective December 8, 2020, the EPA determined that certain areas in New York designated Moderate nonattainment attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2010. The determination was based upon complete quality-assured and certified data for the 3 calendar years 2007–2009. Under the provisions of the EPA’s ozone implementation rule, this determination suspends the applicable requirements under 40 CFR 51.900(f) and those listed under Clean Air Act sections 172(c) and 182 for:

- (1) Buffalo-Niagara Falls (consisting of Erie and Niagara Counties).
- (2) Jamestown (consisting of Chautauqua County).
- (3) Jefferson County (consisting of Jefferson County).

(4) Poughkeepsie (consisting of Dutchess, Orange and Putnam Counties).

Subpart YY—Wisconsin

■ 5. Section 52.2585 is amended by adding paragraph (nn) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(nn) *Determination of attainment by the attainment date.* Effective December 8, 2020, the EPA determined that the Shoreline Sheboygan County, Wisconsin, and the Inland Sheboygan County, Wisconsin, Moderate ozone nonattainment areas attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2010. The determinations are based upon complete quality-assured and certified data for the three calendar years 2007–2009. Together, the separate Shoreline Sheboygan County, Wisconsin, and the Inland Sheboygan County, Wisconsin, areas encompass the identical geographic area of the original full-county Sheboygan County, Wisconsin, area. The EPA’s initial February 8, 2019, determination of attainment by the attainment date applied to the original full-county area, and continues to apply to the separate areas. Under the provisions of the EPA’s ozone implementation rule, this determination suspends the applicable requirements under 40 CFR 51.900(f) and those listed under Clean Air Act sections 172(c) and 182.

* * * * *

[FR Doc. 2020–19559 Filed 10–8–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0621; FRL–10015–23–Region 8]

Approval and Promulgation of Implementation Plans; Utah; Regional Haze 5-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a regional haze progress report State Implementation Plan (SIP) revision submitted by the State of Utah on March 7, 2016. The revision addresses the

requirements for states to submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of adequacy of the State’s regional haze SIP. The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on November 9, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0621. 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., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please email the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, dobrahner.jaslyn@epa.gov.

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

I. Background

Under the Regional Haze Rule, states are required to submit progress reports that evaluate progress towards the reasonable progress goals for each mandatory federal Class I area within the state and in each Class I area outside the state that may be affected by emissions from within the state.¹ In addition, the provisions also require states to submit, at the same time as the progress report, a determination of the adequacy of the state’s existing regional haze plan. The first progress report must be in the form of a SIP revision and is due 5 years after submittal of the initial regional haze SIP.

On March 7, 2016, Utah submitted a Progress Report SIP revision which: (1) detailed the progress made toward achieving progress for improving visibility at Class I areas;² and (2)

¹ 40 CFR 51.309(d)(10).

² 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance

declared a determination of adequacy of the State's regional haze plan to meet reasonable progress goals.

On June 16, 2020, the EPA published a proposed rulemaking titled "Approval and Promulgation of Implementation Plans; Utah; Regional Haze 5-Year Progress Report State Implementation Plan" proposing to approve Utah's Progress Report SIP revision.³ The rationale for the EPA's proposed action is explained in the proposed rulemaking and will not be restated here. The EPA is finalizing its proposed approval of the Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10).

II. Response to Comments

We received three comments on our proposed rulemaking during the public comment period. The EPA determined that some of these comments, or portions thereof, are outside the scope of our proposed action and fail to identify any material issue necessitating a response.

Comment: The commenter stated that part of the approval is based on 7-year old data noting that key visibility metrics described previously show improvement in visibility conditions between the baseline (2000–2004) and current conditions (2009–2013).

Response: We agree with the commenter that Utah provided data from 2009–2013 (current period) to compare visibility progress with the 2000–2004 (baseline period). The Regional Haze Rule required that the first progress reports be submitted in 2013 and include an assessment of changes in visibility conditions between the baseline period and the "past five years."⁴ Additionally, the EPA's April 2013 General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans states that "[f]or 'current visibility conditions,' the reports should include the 5-year average that includes the most recent

quality assured public data available at the time the state submits its 5-year progress report for public review."⁵ Thus, Utah's report, which was submitted for public review in 2014 and to the EPA in 2016,⁶ appropriately compared 2009–2013 data to the baseline period. Additionally, we note that Utah's progress report and the proposed rule also assessed Utah's progress in comparison to the Western Regional Air Partnership (WRAP) 2018 Preliminary Reasonable Progress projections.⁷

Comment: The commenter argues that private universities have CO₂ emissions and should be regulated. In addition, the commenter states that the definition of haze should be broadened to include light emissions.

Response: This action is limited to the visibility impairing pollutants that Utah considered during the initial 10-year regional haze implementation period as required for regional haze progress reports, which included sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter (PM).⁸ Therefore, an EPA assessment of CO₂ and anthropogenic light emissions is beyond the scope of this action as CO₂ and anthropogenic light emissions are not included in Utah's initial regional haze SIP.

Comment: The commenter expressed support for the rulemaking and noted that reductions in visibility impairing emissions will benefit people residing in Utah, as well as the entire ecosystem.

Response: We acknowledge the commenter's support for this action.

III. Final Action

The EPA is finalizing approval of Utah's March 7, 2016, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10).

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Utah State Air Quality Rules described in amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials

generally available through www.regulations.gov and at the EPA Region 8 Office (please email the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁹

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);

with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this section, we mean a "mandatory Class I Federal area."

³ 85 FR 36359 (June 16, 2020).

⁴ 40 CFR 51.309(d)(10), (d)(10)(C).

⁵ U.S. EPA, *General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans* (Intended to Assist States and EPA Regional Offices in the Development and Review of the Progress Reports), page 7, April 2013.

⁶ Utah Progress Report, page 2 (Certification).

⁷ See 85 FR 36364–68.

⁸ See 40 CFR 51.309(d)(10).

⁹ 62 FR 27968 (May 22, 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 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 December 8, 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations,

Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 28, 2020.

Gregory Sopkin,
Regional Administrator, Region 8.

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 TT—Utah

■ 2. In § 52.2320:

■ a. The table in paragraph (c) is amended by adding the entry “R307–110–28” in numerical order.

■ b. The table in paragraph (e) is amended by adding the entry “Progress Report for Utah’s State Implementation Plan for Regional Haze” at the end of the section under the center heading “XVII. Visibility Protection”.

The additions read as follows:

§ 52.2320 Identification of plan.

* * * * *
(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
* * * * *	(e) * * *			
R307–110. General Requirements: State Implementation Plan				
R307–110–28	Section XX. Regional Haze	2/4/2016	[insert Federal Register citation], 10/9/2020.	
* * * * *				
XVII. Visibility Protection				
Progress Report for Utah’s State Implementation Plan for Regional Haze.		2/4/2016	[insert Federal Register citation], 10/9/2020.	
* * * * *				

[FR Doc. 2020-21813 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 147****[EPA-HQ-OW-2020-0123; FRL-10013-68-OW]****Wyoming Underground Injection Control Program; Class VI Primacy****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is hereby approving an application from the State of Wyoming under the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class VI injection wells to protect underground sources of drinking water located within the state, except within Indian lands. EPA will continue to administer all well classes within Indian lands. Class VI wells are used for the underground injection of carbon dioxide into deep subsurface rock formations for long-term storage.

DATES: This final rule is effective on October 9, 2020. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on October 9, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2020-0123. All documents in the docket are listed on the <https://www.regulations.gov> Website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Molly McEvoy, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-4765; email address: mcevoy.molly@epa.gov or Wendy Cheung, Underground Injection Control Section, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202;

telephone number: (303) 312-6242; email address: cheung.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The State of Wyoming received primacy enforcement responsibility (primacy) for Class I, III, IV, and V injection wells under the SDWA section 1422 on August 17, 1983, and Class II injection wells under the SDWA section 1425 on December 23, 1982. Wyoming has applied to EPA under section 1422 of the SDWA, 42 U.S.C. 300h-1, for primacy for Class VI injection wells, except those located on Indian lands. The UIC program revision package from Wyoming includes a description of the State Underground Injection Control program for Class VI injection wells, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and EPA's Regional Administrator for Region 8.

This action is based on a legal and technical review of the State of Wyoming's application as directed in the *Code of Federal Regulations* (CFR) at 40 CFR part 145. As a result of this review, EPA is approving Wyoming's application because it meets or exceeds all applicable requirements for approval under the SDWA section 1422 and the Agency has determined that the state is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations to protect underground sources of drinking water (USDWs).

II. Legal Authorities

This regulation is being promulgated under authority of the SDWA sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9.

III. Requirements for State UIC Programs

SDWA section 1421 requires the Administrator of EPA to promulgate minimum requirements for effective state UIC programs to prevent underground injection activities that endanger USDWs. SDWA section 1422 establishes requirements for states seeking EPA approval of state UIC programs.

For states that seek approval for UIC programs under SDWA section 1422, EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified at 40 CFR part 145. It includes requirements for state permitting programs (by referencing certain

provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

IV. Wyoming's Application*A. Background*

On January 31, 2020, Wyoming submitted a program revision application to add Class VI injection wells to the state's SDWA section 1422 UIC program. The UIC program revision package from Wyoming includes a description of the state UIC program for Class VI injection wells, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and EPA's Regional Administrator for Region 8. EPA reviewed the application for completeness and simultaneously performed a technical evaluation of the application materials.

On April 14, 2020, EPA published a **Federal Register** document announcing Wyoming's submittal of a complete UIC program revision application to the Agency. In that document, EPA proposed to approve the application from Wyoming under the SDWA section 1422 to implement a UIC program for Class VI injection wells located within the state, except those on Indian country; sought public comments on the Agency's intent to approve Wyoming's application; and provided an opportunity to request a public hearing.

B. Public Participation Activities Conducted by the State of Wyoming

In 2019, Wyoming held two public hearings with public comment periods on the state's intent to adopt its Class VI UIC regulations. The Wyoming Water and Waste Advisory Board (WWAB) held the first public hearing on June 25, 2019, in Casper, Wyoming. The WWAB accepted public comments beginning on May 17, 2019, through the adjournment of the public hearing. The Wyoming Environmental Quality Council held the second public hearing on November 19, 2019, in Cheyenne, Wyoming. The Wyoming Environmental Quality Council accepted comments on proposed revisions from September 13, 2019, through October 30, 2019. The Wyoming Class VI regulations were signed by the Governor of Wyoming on January 23, 2020. Documentation of all public participation activities, including those associated with Class VI UIC regulations and subsequent revisions that the state proposed before 2019 can

be found in EPA's Docket ID No. EPA-HQ-OW-2020-0123.

C. Public Participation Activities Conducted by EPA

On April 14, 2020, EPA issued a proposed rule (85 FR 20621), proposing to approve Wyoming's application to implement a UIC program for Class VI injection wells. This proposed rule provided that a public hearing would be held if requested. EPA did not receive any requests for a public hearing.

V. Public Comments Received on the Proposed Rule and EPA's Response to Comments

As previously noted, on April 14, 2020, EPA issued a proposal to approve the Wyoming application to implement the Class VI UIC program within the state (85 FR 20621) and requested public comments. The public comment period was open for 45 days and ended on May 29, 2020. EPA received seven public comment submissions. Of the seven commenters, all submitted comments in support of the rule and one requested clarification on certain aspects of Wyoming's UIC Class VI Program. After close consideration of the comments and coordination with the Wyoming Department of Environmental Quality, EPA provided clarification on the areas where the commenter requested clarification. The comments received and EPA's responses are available in EPA's Docket No. EPA-HQ-OW-2020-0123.

VI. EPA's Approval—Incorporation by Reference

In this action, EPA is approving the State of Wyoming's Class VI UIC program; whereby the state will assume primacy for regulating Class VI injection wells in the state, except within Indian lands. Wyoming's statutes and supporting documentation are publicly available in EPA's Docket No. EPA-HQ-OW-2020-0123. This action amends 40 CFR part 147 and incorporates by reference EPA-approved state statutes and regulations. EPA will continue to administer the UIC program for all well classes within Indian lands.

The provisions of the State of Wyoming's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of UIC Class VI wells are incorporated by reference into 40 CFR 147.2250 by this rule. Provisions of the State of Wyoming's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV, and V injection wells have already been incorporated by

reference into 40 CFR 147.2250 through prior EPA rules. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to the SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, EPA is reformatting the codification of EPA-approved Wyoming SDWA section 1422 UIC program statutes and regulations for well Classes I, III, IV, V and VI. Instead of codifying the Wyoming statutes and regulations as separate paragraphs, EPA is now incorporating by reference a compilation that contains EPA-approved Wyoming statutes and regulations for well Classes I, III, IV, V, and VI. This compilation is incorporated by reference into 40 CFR 147.2250 and is available at <https://www.regulations.gov> in the docket for this rule. A complete list of the Wyoming statutes and regulations contained in the compilation, titled "EPA-approved Wyoming SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI," is codified as Table 1 to paragraph (a) in that section.

EPA will continue to oversee the State of Wyoming's administration of the SDWA Class VI program. As part of EPA's oversight responsibility, EPA will require Wyoming to submit semi-annual reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the State of Wyoming, signed by the Regional Administrator on March 20, 2020, makes available to EPA any information obtained or used by Wyoming's Class VI UIC program, without restriction.

VII. Effective Date

This final rule is effective immediately upon publication. Section 553(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, "except . . . as otherwise provided by the agency for good cause," among other exceptions. The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should "balance the necessity for

immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling." *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this action will simply provide that the State of Wyoming has primacy under the SDWA for the UIC Class VI program, pursuant to which the State of Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program. At this time, there are no federally permitted Class VI wells in Wyoming. As a result, there are no current permittees that need time to prepare for this rule and any prospective permittees will benefit from the regulatory certainty that an immediate effective date will provide. This final rule will not require affected persons to take action or change behavior to come into compliance within the next 30 days. For these reasons, EPA finds that good cause exists under section 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is an approval of a state UIC program.

B. *Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is exempt under Executive Order 12866.

C. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or recordkeeping requirements will be based on Wyoming's UIC Regulations, and the State of Wyoming is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action does not impose any requirements or burden on small entities as this action approves a state program.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. EPA's approval of Wyoming's program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

F. Executive Order 13132: Federalism

EPA has concluded that this action has federalism implications. Although federalism concerns were implicated by this action, on the distribution of power and responsibilities among the state and federal government, the other criteria identified in Executive Order (E.O.) 13132 do not apply. See E.O. 13132(6)(b)&(c). For example, this action does not impose substantial direct compliance costs on the state, which voluntarily sought primacy. Moreover, EPA is required by statute to approve a primacy application that meets applicable requirements. Finally, this action does not preempt state law.

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

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

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

EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is simply approving primacy for Wyoming under the SDWA for the Class VI UIC program, pursuant to which Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule for an immediate effective date as discussed in Section VII of this document, which includes the basis for that finding.

List of Subjects in 40 CFR 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations,

Reporting and recordkeeping requirements, Water supply.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*; and 42 U.S.C. 6901 *et seq.*

- 1. Amend § 147.2550 by:
 - a. Revising the section heading;
 - b. Revising the introductory text and paragraph (a);
 - c. Adding paragraphs (c)(6) and (7), and (d)(3) and (4); and
 - d. Revising paragraph (e).

The revisions and additions read as follows.

§ 147.2550 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the State of Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. The effective date of this program is August 17, 1983. The UIC Program for Class VI wells in Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by EPA pursuant to the SDWA section 1422. The effective date of this program is October 9, 2020. The UIC program for Class I, III, IV, V, and VI wells in the State of Wyoming, except those located on Indian lands, consists of the following elements, as submitted to the EPA in the State's program application and program revision application.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations approved by the EPA for inclusion in “EPA-Approved Wyoming SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI,” dated March 31, 2020, and listed in Table 1 to this paragraph (a), are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for Wyoming. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Wyoming's regulations that are

incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202 and the Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301

Constitution Ave., NW, Washington, DC 20460. If you wish to obtain materials from the EPA Regional Office, please call (303) 312-7226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. You may also inspect

the materials 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 www.archives.gov/federal-register/cfr/ibr-locations.html.

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED WYOMING SDWA § 1422 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASSES I, III, IV, V AND VI

State citation	Title/subject	State effective date	EPA approval date ¹
Wyoming Statutes sections 35-11-101 through 35-11-115, and 35-11-301 through 35-11-305.	Wyoming Environmental Quality Act	1989	March 6, 1991, 56 FR 9421.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality Chapter III: Regulations for Permit to Construct, Install or Modify Public Facilities Capable or, (sic) Causing or Contributing to Pollution.	Regulations for Permit to Construct, Install or Modify Public Water Supplies, Wastewater Facilities, Disposal Systems, Biosolids Management Facilities, Treated Wastewater Reuse Systems and Other Facilities Capable of Causing or Contributing to Pollution.	1983	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter VIII: Quality Standards for Groundwaters of Wyoming.	Quality Standards for Groundwaters of Wyoming	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter IX: Wyoming Groundwater Pollution Control Permit.	Wyoming Groundwater Pollution Control Permit	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells.	Prohibitions of Permits for New Hazardous Waste Injection Wells.	1989	March 6, 1991, 56 FR 9421.
Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining.	In Situ Mining	1981	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXIV: Class VI Injection Wells and Facilities Underground and Injection Control Program.	Class VI Injection Wells and Facilities Underground and Injection Control Program.	2020	October 9, 2020, [Insert Federal Register citation]

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

(c) * * *
 (6) Memorandum of Agreement addendum between EPA, Region VIII, and Wyoming Department of Environmental Quality, signed by the EPA Regional Administrator on March 20, 2020.

(7) Letter from Governor of Wyoming to Regional Administrator, EPA Region VIII, "Re: UIC Program Class VI Application," January 23, 2020.

(d) * * *
 (3) "Attorney General's Statement— "Attorney General's Statement to Accompany Wyoming's Underground Injection Control Program Class VI Primacy Application," signed by Attorney General and Assistant Attorney General for the State of Wyoming, January 9, 2020.

(4) Letter from the Attorney General for the State of Wyoming to Regional Counsel, EPA Region VIII, "Re: Wyoming Underground Injection

Control Program Class VI Regulations," October 25, 2019.

(e) The Program Description and any other materials submitted as part of the application or amendment thereto, and the Program Description and any other materials submitted as part of the revision application or amendment thereto.

[FR Doc. 2020-20544 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[20X.LLWO300000.L13100000.PP0000]

RIN 1004-AE74

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the fees set forth in the Bureau of Land Management (BLM) mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease

renewals and mineral patent adjudications.

DATES: This final rule is effective October 9, 2020.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW, Washington, DC 20240; Attention: RIN 1004-AE74.

FOR FURTHER INFORMATION CONTACT: Rebecca Good, Acting Chief, Division of Fluid Minerals, 307-261-7633, rgood@blm.gov; Tim Barnes, Acting Chief, Division of Solid Minerals, 541-416-6858, tbarnes@blm.gov; or Faith Bremner, Regulatory Affairs, 202-912-7441, fbremner@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) that established new fees or revised fees and service charges for processing documents related to its

minerals programs (“2005 Cost Recovery Rule”). In addition, the 2005 Cost Recovery Rule also established the method the BLM would use to adjust those fees and service charges on an annual basis.

The regulations at 43 CFR 3000.12(a) provide that the BLM will annually adjust fees established in Subchapter C (43 CFR parts 3000-3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those fees and service charges consistent with that direction. The fee adjustments in this final rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this final rule may be effective less than 30 days after publication. See 43 CFR 3000.10(c).

II. Discussion of Final Rule

As set forth in the 2005 Cost Recovery Rule, the fee updates are based on the change in the IPD-GDP. The BLM’s minerals program publishes the updated

cost recovery fees annually, at the start of each fiscal year (FY).

This final rule updates the current (FY 2020) cost recovery fees for use in FY 2021. The current fees were set by the cost recovery fee rule published on November 6, 2019 (84 FR 59730), effective November 6, 2019. The update in this final rule adjusts the FY 2020 fees based on the change in the IPD-GDP from the 4th Quarter of 2018 to the 4th Quarter of 2019.

Under this final rule, 30 fees will remain the same and 18 fees will increase. Of the 18 fees that are being increased by this final rule, 11 will increase by \$5 each, and five will increase by \$10 each. The largest increase, \$50, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from \$3,290 to \$3,340. The fee for adjudicating a patent application containing 10 or fewer claims will increase by \$25, from \$1,645 to \$1,670. It is important to note that the “real” values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States.

The calculations that resulted in the new fees are included in the table below:

Fixed Cost Recovery Fees	Existing fee ¹ (FY 2020)	Existing value ²	IPD-GDP increase ³	New value ⁴	New fee ⁵ (FY 2021)
<i>Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):</i>					
Noncompetitive lease application	\$435	\$437,281	\$7.040	\$444.321	\$445
Competitive lease application	170	169.699	2.732	172.431	170
Assignment and transfer of record title or operating rights	100	97.894	1.576	99.470	100
Overriding royalty transfer, payment out of production	15	13.050	0.210	13.260	15
Name change, corporate merger or transfer to heir/ devisee	230	228.419	3.677	232.096	230
Lease consolidation	485	482.951	7.775	490.726	490
Lease renewal or exchange	435	437.281	7.040	444.321	445
Lease reinstatement, Class I	85	84.832	1.365	86.197	85
Leasing under right-of-way	435	437.281	7.040	444.321	445
Geophysical exploration permit application—Alaska ...	25	26.712	0.430	27.142	25
Renewal of exploration permit—Alaska	25	26.712	0.430	27.142	25
<i>Geothermal (part 3200):</i>					
Noncompetitive lease application	435	437.281	7.040	444.321	445
Competitive lease application	170	169.699	2.732	172.431	170
Assignment and transfer of record title or operating right	100	97.894	1.576	99.470	100
Name change, corporate merger or transfer to heir/ devisee	230	228.419	3.677	232.096	230
Lease consolidation	485	482.951	7.775	490.726	490
Lease reinstatement	85	84.832	1.365	86.197	85
Nomination of lands	120	122.176	1.967	124.143	125

¹ The Existing Fee was established by the 2019 (FY 2020) cost recovery fee update rule published November 6, 2019 (84 FR 59730), effective November 6, 2019.

² The Existing Value is the figure from the New Value column in the previous year’s rule.

³ From 4th Quarter 2018 (111.256) to 4th Quarter 2019 (113.043), the IPD-GDP increased by 1.61 percent. The value in the IPD-GDP Increase column is 1.61 percent of the “Existing Value.”

⁴ The sum of the “Existing Value” and the “IPD-GDP Increase” is the “New Value.”

⁵ The “New Fee” for FY 2021 is the “New Value” rounded to the nearest \$5 for values equal to or greater than \$1, or rounded to the nearest penny for values under \$1.

Fixed Cost Recovery Fees	Existing fee ¹ (FY 2020)	Existing value ²	IPD–GDP increase ³	New value ⁴	New fee ⁵ (FY 2021)
Plus per acre nomination fee	0.12	0.121	0.001	0.122	0.12
Site license application	65	65.263	1.050	66.313	65
Assignment or transfer of site license	65	65.263	1.050	66.313	65
<i>Coal (parts 3400, 3470):</i>					
License to mine application	15	13.050	0.210	13.260	15
Exploration license application	360	358.956	5.779	364.735	365
Lease or lease interest transfer	70	71.804	1.156	72.960	75
<i>Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):</i>					
Applications other than those listed below	40	39.162	0.630	39.792	40
Prospecting permit amendment	70	71.804	1.156	72.960	75
Extension of prospecting permit	115	117.475	1.891	119.366	120
Lease modification or fringe acreage lease	35	32.642	0.525	33.167	35
Lease renewal	560	561.287	9.036	570.323	570
Assignment, sublease, or transfer of operating rights	35	32.643	0.525	33.168	35
Transfer of overriding royalty	35	32.643	0.525	33.168	35
Use permit	35	32.643	0.525	33.168	35
Shasta and Trinity hardrock mineral lease	35	32.643	0.525	33.168	35
Renewal of existing sand and gravel lease in Nevada	35	32.643	0.525	33.168	35
<i>Multiple Use; Mining (Group 3700):</i>					
Notice of protest of placer mining operations	15	13.050	0.210	13.260	15
<i>Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):</i>					
Application to open lands to location	15	13.050	0.210	13.260	15
Notice of location	20	19.569	0.315	19.884	20
Amendment of location	15	13.050	0.210	13.260	15
Transfer of mining claim/site	15	13.050	0.210	13.260	15
Recording an annual FLPMA filing	15	13.050	0.210	13.260	15
Deferment of assessment work	115	117.475	1.891	119.366	120
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35	32.643	0.525	33.168	35
Mineral patent adjudication (more than ten claims)	3,290	3,289.392	52.959	3,342.351	3,340
(ten or fewer claims)	1,645	1,644.679	26.479	1,671.158	1,670
Adverse claim	115	117.475	1.891	119.366	120
Protest	70	71.804	1.156	72.960	75
<i>Oil Shale Management (parts 3900, 3910, 3930):</i>					
Exploration license application	345	344.294	5.543	349.837	350
Assignment or sublease of record title or overriding royalty	70	70.032	1.127	71.159	70

III. How Fees Are Adjusted

The BLM took the base values (or “existing values”) upon which it derived the FY 2020 cost recovery fees (or “existing fees”) and multiplied them by the percent change in the IPD–GDP (1.61 percent for this update) to generate the “IPD–GDP increases” (in dollars). The BLM then added the “IPD–GDP increases” to the “existing values” to generate the “new values.” The BLM then calculated the “new fees” by rounding the “new values” to the closest multiple of \$5 for fees equal to or greater than \$1, or to the nearest cent for fees under \$1. The “new fees” are the updated cost recovery fees for FY 2021.

The source for IDP–GDP data is the U.S. Department of Commerce, Bureau of Economic Analysis, specifically, “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product,” which the BLM accessed on July 6, 2020, on the web at <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=>

19&step=3&isuri=1&1921=survey&1903=13.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this final rule under Executive Order 12866.

The BLM has determined that this final rule will not have an annual effect on the economy of \$100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes in today’s rule are much smaller than those in the 2005 Cost Recovery Rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 Cost Recovery Rule, please contact one of the persons listed

in the FOR FURTHER INFORMATION CONTACT section above.

This final rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies’ actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs.

Finally, this final rule will not raise novel legal or policy issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted

by and explained in the 2005 Cost Recovery Rule.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This action is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111): 1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112): 1,500 or fewer employees
- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399): 500 or fewer employees

The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule may affect a large number of small entities because 18 fees for activities on public lands will be increased. The adjustments result in no increase in the fees for processing 30 actions relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving

more than 10 mining claims; that fee will increase by \$50. It is important to note that the "real" values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States. Accordingly, the BLM has concluded that the economic effect of the rule's changes will not be significant, even for small entities.

For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 Cost Recovery Rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in this rule are substantially smaller than those provided for in the 2005 Cost Recovery Rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

The Paperwork Reduction Act of 1995

This final rule does not contain information collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this

rule, the new fees may affect the non-hour burdens associated with the following control numbers:

Oil and Gas

- (1) 1004–0034 which expires June 30, 2021;
- (2) 1004–0137 which expires October 31, 2021
- (3) 1004–0162 which expires October 31, 2021;
- (4) 1004–0185 which expires December 31, 2021;

Geothermal

- (5) 1004–0132 which expires July 31, 2020;⁶

Coal

- (6) 1004–0073 which expires April 30, 2023;

Mining Claims

- (7) 1004–0025 which expires February 28, 2022;
- (8) 1004–0114 which expires April 30, 2023; and

Leasing of Solid Minerals Other Than Oil Shale

- (9) 1004–0121 which expires October 31, 2022.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this final rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for

⁶ A renewal request for control number 1004–0132 was submitted to the Office of Management and Budget on February 20, 2020

exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in State, local, private sector, or tribal government expenditures of \$100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian tribes. Consequently, the BLM

did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation’s Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this final rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for FY 2021. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM website (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2021 PROCESSING AND FILING FEE TABLE

Document/action	FY 2021 fee
<i>Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):</i>	
Noncompetitive lease application	\$445.
Competitive lease application	170.
Assignment and transfer of record title or operating rights	100.
Overriding royalty transfer, payment out of production	15.
Name change, corporate merger or transfer to heir/devisee	230.
Lease consolidation	490.
Lease renewal or exchange	445.
Lease reinstatement, Class I	85.
Leasing under right-of-way	445.
Geophysical exploration permit application—Alaska	25.
Renewal of exploration permit—Alaska	25.
<i>Geothermal (part 3200):</i>	
Noncompetitive lease application	445.
Competitive lease application	170.
Assignment and transfer of record title or operating rights	100.
Name change, corporate merger or transfer to heir/devisee	230.
Lease consolidation	490.
Lease reinstatement	85.
Nomination of lands	125.
plus per acre nomination fee	0.12.
Site license application	65.
Assignment or transfer of site license	65.
<i>Coal (parts 3400, 3470):</i>	
License to mine application	15.
Exploration license application	365.
Lease or lease interest transfer	75.
<i>Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):</i>	
Applications other than those listed below	40.
Prospecting permit application amendment	75.
Extension of prospecting permit	120.
Lease modification or fringe acreage lease	35.
Lease renewal	570.
Assignment, sublease, or transfer of operating rights	35.

TABLE 1 TO PARAGRAPH (a)—FY 2021 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2021 fee
Transfer of overriding royalty	35.
Use permit	35.
Shasta and Trinity hardrock mineral lease	35.
Renewal of existing sand and gravel lease in Nevada	35.
<i>Public Law 359; Mining in Powersite Withdrawals: General (part 3730):</i>	
Notice of protest of placer mining operations	15.
<i>Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):</i>	
Application to open lands to location	15.
Notice of location *	20.
Amendment of location	15.
Transfer of mining claim/site	15.
Recording an annual FLPMA filing	15.
Deferment of assessment work	120.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35.
Mineral patent adjudication	3,340 (more than 10 claims). 1,670 (10 or fewer claims).
Adverse claim	120.
Protest	75.
<i>Oil Shale Management (parts 3900, 3910, 3930):</i>	
Exploration license application	350.
Application for assignment or sublease of record title or overriding royalty	70.

* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute (43 CFR part 3833) must be paid.

* * * * *

Casey Hammond,
Principal Deputy Assistant Secretary,
Exercising the Authority of the Assistant
Secretary, Land and Minerals Management.
[FR Doc. 2020-20542 Filed 10-8-20; 8:45 am]
BILLING CODE 4310-84-P

**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Part 1

[WC Docket No. 17-84; WT Docket No. 17-79, FCC 18-111; FRS 17035]

**Accelerating Wireline and Wireless
Broadband Deployment by Removing
Barriers to Infrastructure Investment**

AGENCY: Federal Communications
Commission.

ACTION: Correcting amendment.

SUMMARY: Revisions to certain of the Federal Communications Commission’s pole attachment rules were published in the **Federal Register** on September 14, 2018. However, that document incorrectly listed a cross-reference in one section of the Commission’s rules, and this document corrects those final regulations.

DATES: Effective October 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Wireline Competition Bureau,
Competition Policy Division, Michael
Ray, at (202) 418-0357, michael.ray@
fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC published a rule in the September 14,

2018 edition of the **Federal Register** at 83 FR 46812 entitled “Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” That rule contained an error in a cross-reference in § 1.1413(b). The FCC is publishing this correcting amendment to fix the cross-reference to prevent any confusion among the regulated community and the general public.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Pole attachment complaint procedures, Reporting and recordkeeping requirements, Telecommunications.

For the reasons set forth in the preamble, the FCC amends 47 CFR part 1 as follows:

**PART 1—PRACTICE AND
PROCEDURE**

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

- 2. Amend § 1.1413 by revising paragraph (b) to read as follows:

§ 1.1413 Complaints by incumbent local exchange carriers.

* * * * *

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into or renewed after the effective date of this section, there is a presumption that an

incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In such complaint proceedings challenging pole attachment rates, there is a presumption that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with § 1.1406(d)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2020-19686 Filed 10-8-20; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 90, and 97

[WT Docket No. 19–348; FCC 20–138; FRS 17120]

Facilitating Shared Use in the 3100–3550 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts changes to its rules to prepare the 3.45–3.55 GHz band for commercial wireless services. It removes the secondary, non-federal allocations in the 3.3–3.55 GHz band for radiolocation services and the amateur radio service. These services will continue in alternate spectrum; radiolocation operations will be moved to the 2.9–3.0 GHz band, already home to similar operations, and amateur licensees will be able to relocate their operations to other frequencies already available for amateur operations. Clearing this band of secondary services will allow the Commission to auction the 3.45–3.55 GHz band for commercial wireless services on a co-primary basis with federal radionavigation and radiolocation operations.

DATES: Effective November 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Joyce Jones, Wireless

Telecommunications Bureau, Mobility Division, (202) 418–1327 or joyce.jones@fcc.gov, or Ira Keltz, Office of Engineering and Technology, (202) 418–0616 or ira.keltz@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* in WT Docket No. 19–348, FCC 20–138, adopted September 30, 2020, and released October 2, 2020. The full text of the *Report and Order* is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-20-138A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant

economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. As required by the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* released in December 2019 in this proceeding (85 FR 3579, January 22, 2020). The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *Report and Order*, *Order of Proposed Modification*, and *Orders*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified 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).

Congressional Review Act

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

Synopsis

I. Introduction

1. In the *Report and Order* the Commission continues to execute its comprehensive strategy to Facilitate America’s Superiority in 5G Technology (the 5G FAST Plan). It builds on efforts to unleash additional much-needed mid-band spectrum for flexible use, focusing on the 3100–3550 MHz band. Continued technological developments make 3 GHz spectrum ideal for next generation wireless services, including 5G, and the repurposing of 3.5 GHz and 3.7 GHz band spectrum presents an opportunity to make a large contiguous block of mid-band spectrum available for commercial use. Collectively, the 3.45–3.55 GHz band and neighboring 3.5 GHz and 3.7 GHz bands could offer 530 megahertz of mid-band spectrum for flexible use.

2. The Commission therefore acts now to prepare the 3.45–3.55 GHz band for such future use. The *Report and Order* adopts the Commission’s 2019 proposal to remove the secondary, non-federal allocations from the 3.3–3.55 GHz band as a first step toward future sharing between federal incumbents and commercial operations. It expects that this action, in tandem with continued work by the Department of Defense (DoD) and other federal partners, will allow for agencies to file transition plans no later than April 2021, and for commercial operations to begin in early 2022.

II. Background

3. The lower 3 GHz band—and the 3450 MHz to 3550 MHz portion of the band (3.45–3.55 GHz band) in particular—has been targeted as spectrum to support 5G both here and abroad, and assessed within the federal government, across the legislative and executive branches, as well as within the Commission. The National Telecommunications and Information Administration (NTIA) identified the 3450–3550 MHz spectrum band as a potential candidate for shared use between federal incumbents and commercial services two years ago. In 2018, Congress passed the Fiscal Year 2018 omnibus spending bill, which directed NTIA to work with the Commission on identifying sharing opportunities in the 3.1–3.55 GHz band.

4. In December 2019, the Commission adopted a *Notice of Proposed Rulemaking* that proposed to clear non-federal secondary allocations from the 3.3–3.5 GHz band as a preliminary step toward potential future shared use between federal incumbents and commercial users of the band. In June 2020, pursuant to its obligations under the Commercial Spectrum Enhancement Act, the Commission notified the NTIA of its plan to commence an auction in December 2021 for licenses in 100 megahertz of the 3400–3550 MHz band. There has also been a broad and consistent effort by international governing bodies and global standards setting organizations to review the suitability of several frequency bands for next generation 5G wireless services, including the lower 3 GHz band. The Commission’s continued efforts to promote flexible use licensing in the band will help to promote international harmonization.

5. In 2020, the White House and the DoD formed America’s Mid-Band Initiative Team (AMBIT) with the goal of making 100 megahertz of contiguous mid-band spectrum available in the 3.45–3.55 GHz band for full commercial

use. Under the agreement that was reached as part of the AMBIT study process, the DoD expects to enable commercial 5G systems to operate at full power throughout almost all the contiguous United States. The DoD would also require access to the spectrum during times of national emergency.

6. Currently, the entire 3.1–3.55 GHz band is allocated for both federal and non-federal radiolocation services, with non-federal users operating on a secondary basis to primary federal radiolocation services. The DoD operates high-powered defense radar systems on fixed, mobile, shipborne, and airborne platforms in this band. From 3.1–3.3 GHz, the band is also allocated for federal and non-federal space research (active) and earth exploration satellite (active) in addition to radiolocation services.

7. There are 17 non-federal radiolocation licenses in the portion of the band below 3.3 GHz, which are held by power companies and municipalities. Between 3.3 GHz and 3.55 GHz, there are only eight active non-federal radiolocation licenses, which are being used for a variety of commercial and industrial radiolocation services. In addition, non-federal amateur services operate in the 3.3–3.5 GHz portion of the band pursuant to a secondary allocation and must not cause harmful interference to operations such as radio astronomy stations and stations authorized by other nations for radiolocation service. The 3.5–3.55 GHz portion of the band is also allocated for federal aeronautical radionavigation services. In addition, the Radio Astronomy Service makes use of 3260–3267 MHz, 3332–3339 MHz, and 3345.8–3352.5 MHz. Also among the non-federal users operating in the 3.1–3.55 GHz band are holders of hundreds of non-federal experimental licenses, including special temporary authorizations (STAs). These experimental licenses and STAs are issued pursuant to part 5 of the Commission's rules and may be granted for a broad range of research and experimentation purposes, but experimental licenses and STAs must operate on a non-interference basis.

8. The band immediately above 3.1–3.55 GHz is authorized for commercial wireless operations. In 2015, the Commission established the Citizens Broadband Radio Service in the 3.55–3.7 GHz band (3.5 GHz band) for shared use between new commercial wireless operations and incumbent operations—including military radar systems, non-federal FSS earth stations, and, for a limited time, grandfathered wireless

broadband licensees in the 3.65–3.7 GHz band. The primary allocation for federal radiolocation operations continues below 3.1 GHz, with secondary non-federal radiolocation operations in this spectrum as well.

III. Report and Order

A. Clearing the 3.3–3.55 GHz Band of Secondary, Non-Federal Allocations

9. In its December 2019 *Notice of Proposed Rulemaking*, the Commission proposed to eliminate the non-federal radiolocation service allocations in the 3.3–3.55 GHz band, as well as the non-federal amateur allocation in the 3.3–3.5 GHz band. Both are secondary users of the band. The Commission finds that removing the existing secondary non-federal allocations from the 3.3–3.55 GHz band and clearing these non-federal operations from the band is in the public interest, and therefore adopts this proposal. Because the DoD and NTIA agree that commercial users operating pursuant to flexible use licenses can be accommodated in the 3.45–3.55 GHz band at full power, and given continued interest in the 3.3–3.45 GHz band for future sharing for flexible use licenses, retaining the secondary non-federal allocations across this spectrum would hinder the Commission's ability to offer flexible use licensing in the future and would undermine the intensive and efficient use of valuable mid-band spectrum. The Commission will allow secondary non-federal licensees operating as of the effective date of this Report and Order to continue to operate in the 3.45–3.55 GHz band while it finalizes plans to reallocate spectrum in the band. Authorization for these operations will sunset on a date consistent with the first possible grant of flexible use authorizations to new users in that portion of the band. The Commission revises the Table of Allocations accordingly.

10. The Commission considers clearing spectrum for flexible use to be a priority when it is feasible to do so. Spectrum that has been cleared to the greatest extent possible provides maximum flexibility in future uses, ensuring intensive and efficient use of that spectrum going forward. Spectrum encumbrances, on the other hand, constrain the potential of future uses of that spectrum, deter investment in the band, and undermine the public interest benefits of the relicensing process. Given the ever-increasing demand for wireless spectrum for broadband access and the particular need for additional mid-band spectrum for those services, such spectrum should be made available

for exclusive, as opposed to shared, non-federal use where possible.

11. The Commission has broad authority under the Communications Act to modify its rules governing use of radio spectrum, and specific authority to allocate spectrum so as to provide flexibility of use. Under the Commission's rules, secondary spectrum users cannot claim protection from primary operations, including those subsequently licensed by the Commission, and they are subject to losing their spectrum rights if the primary operations in the band change at a later date.

12. From a technical perspective, the removal of secondary, non-federal licensees from the 3.3–3.55 GHz band is necessary given the incompatibility of radiolocation and amateur operations with ubiquitous mobile and fixed broadband services, which are likely the primary uses pursuant to flexible use licenses. Existing federal use of this band is sporadic and geographically localized, which has created a spectral environment well-suited to the coexistence of radiolocation and amateur operations. By contrast, nationwide broadband services operate at all times in virtually all areas and would provide these secondary operations with little opportunity for meaningful, interference-free operations. Further, we expect that, if the incumbents were to try to maintain some degree of secondary operations, the dense and growing deployment of base stations providing wide area mobile services on a primary basis using all frequencies in the band would make such efforts on the part of secondary, co-channel systems too tenuous. Commenters agree that we should not permit continued secondary operations if flexible use licenses are to be used for 5G and other forms of nationwide wireless broadband. The Commission concludes that such secondary. Secondary systems could not operate without creating significant interference risks both to their own operations and to primary flexible use services.

13. Clearing this band of encumbrances will ensure that it is used intensely and efficiently, create a spectral environment that will support wireless broadband operations, and promote commercial interest and investment in the band. Current non-federal secondary radiolocation uses—particularly high-power weather radar systems—are incompatible with the anticipated future use of the band, so our actions today are a necessary predicate to repurposing the 3.45–3.55 GHz band for flexible use services. Sunsetting the secondary non-federal

allocations will prevent adjacent-channel issues and preserve the possibility of additional clearing for flexible use licensing below 3.45 GHz, furthering the public interest. Deciding to relocate these non-federal users at this time will facilitate timely advance planning to accommodate the needs of all existing and future federal and non-federal users—a complex undertaking posing technical and financial issues that the Commission will need to work with relevant stakeholders to resolve. This action will increase investment in communications services and systems and technological development by providing maximum opportunities for deployment of flexible use services, while continuing to provide spectrum for these secondary operations.

14. This decision notwithstanding, secondary non-federal radiolocation licensees and amateur license holders operating as of the effective date of this Report and Order may continue operating while the Commission finalizes plans to reallocate spectrum in the 3.45–3.55 GHz band. Authorization for these operations will sunset on a date consistent with the first possible grant of flexible use authorizations to new users in that portion of the band. For example, if we adopt a licensing scheme that will result in an auction to assign licenses, secondary use would sunset within 90 days of the close of the auction. The Table of Allocations is revised accordingly. There are hundreds of experimental licenses, including experimental STAs, active throughout the 3.1–3.55 GHz band at any given time. Going forward, these operations will be permitted here under the same limitations as they are in other bands licensed for flexible use—including that they must operate on a non-interference basis.

B. Relocation of Secondary, Non-Federal Radiolocation Operations

15. The Commission removes the secondary, non-federal radiolocation allocation in the 3.3–3.55 GHz band. In relocating these operations, their current 50-megahertz allocation will be continued, along with their secondary status. Secondary, non-federal radiolocation licensees operating as of the effective date of this Report and Order may, however, continue to operate in this band until authorization for such operations are sunset as described above. Radiolocation authorization will sunset on a date consistent with the first possible grant of flexible use authorizations to new users in that portion of the band (*e.g.*, 90 days from the close of the auction if the Commission adopts a licensing

scheme that will result in an auction to assign licenses).

16. Although spectrum above 3.45 GHz is the current focus for flexible use operations, secondary non-federal radiolocation operations will not be allowed to continue in the spectrum between 3.3 GHz and 3.45 GHz. Rather, in order to prevent cross-service, adjacent channel interference to new operations and to prepare the band for future relicensing, all secondary radiolocation operations in the 3.3–3.55 GHz band will be required to relocate to the 2.9–3.0 GHz band by a date certain that will be set by subsequent Commission action in this proceeding. Spectrum below 3.0 GHz is the preferable location for these operations, and will allow radiolocation operators to provide the same S-band (2–4 GHz) radar services as they do at 3.3–3.55 GHz and will minimize adjacent channel interference to potential future flexible use licenses.

17. Commenters currently holding these radiolocation licenses agree with relocation below 3.1 GHz, and no commenters object or offer any alternative means by which flexible use licensing could move forward in this band. Given the ongoing consideration of the entire 3.1–3.55 GHz band for future flexible use licenses, the Commission finds it is unwise to relocate secondary radiolocation operations to the lower portion of this band, *i.e.*, 3.1–3.3 GHz. We also agree with commenters that identified spectrum below 3.1 GHz as a preferable location for these operations. In order to minimize adjacent channel interference to potential future flexible use licenses, however, we find that moving these operations to spectrum below 3.0 GHz is preferable to placing them in the 3.0–3.1 GHz band. Since the 2.9–3.0 GHz band already hosts non-federal radiolocation operations on a secondary basis, including the NEXRAD weather radar system operated by the National Weather Service, the band should be able to accommodate these relocated operations without running the risk of causing adjacent channel interference to flexible use licenses. NBCUniversal agrees with this conclusion, and no commenter disagrees. There is also no dispute in the record that existing equipment can be upgraded to support operations in this lower S-band spectrum, which should reduce the expense and complexity involved in the relocation. In relocating these operations, we will preserve their current 50-megahertz allocation and retain their secondary status.

C. Sunset of Secondary Amateur Allocation

18. The Commission removes the amateur allocation from the 3.3–3.5 GHz band. As it did with radiolocation operations, the Commission adopts changes to its rules today that provide for the sunset of the secondary amateur allocation in the band, but allow continued use of the band for amateur operations, pending resolution of the issues raised in the Further Notice. Secondary non-federal amateur licensees operating in this band as of the effective date of this Report and Order may continue while the Commission finalizes plans to reallocate spectrum in the 3.45–3.55 GHz band. Authorizations will sunset on a date consistent with the first possible grant of flexible use authorizations to new users in that portion of the band—for example, 90 days after the close of the auction if the Commission adopt a licensing scheme that will result in an auction to assign licenses. The Table of Allocations is revised accordingly.

19. Clearing all secondary operations, including amateur operations, from this spectrum will allow us to maximize the band for potential flexible use operations in the future. Further, to prevent adjacent-channel issues and to preserve the possibility of additional clearing for flexible use licensing below 3.45 GHz, sunsetting the secondary amateur allocation from the entire 3.3–3.5 GHz portion of the band is in the public interest. Amateur stations in this band are licensed on a shared basis. However, only amateur service operators with privileges for transmitting in this band based on their license class may operate stations on this spectrum. The class of a given operator's license determines on which of the many amateur frequencies it may operate, and amateurs with access to the 3.3–3.5 GHz band also have access to a large number of other bands. These include bands with similar characteristics and operations such as the 2.39–2.45 GHz and 5.65–5.925 GHz bands, as well as dozens of others. Due to the unique nature of the licensing of the amateur service, the Commission does not provide for relocation of these operations in the same way as for radiolocation operations. Instead, amateur operators may choose for themselves whether to continue these operations in alternate spectrum, and which available spectrum to use.

20. Notwithstanding the utility of amateur operations in this band, operators that chose to construct networks in this band did so despite the fact that the amateur allocation was

secondary and entirely subject to current or future primary operations. As part 97 of our rules makes clear, amateur operations are a noncommercial, voluntary service. Amateur stations are permitted to operate in many different bands; amateur stations operating in the 3 GHz band have several other nearby bands available to them with similar propagation characteristics, such as the nearby 2 GHz band and the 5 GHz band. After the authorization to operate sunsets for secondary amateur licensees here, amateur stations will continue to have available these and other bands that are allocated for amateur use.

VI. Ordering Clauses

21. *It is ordered*, pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, 310, and 316, of the Communications Act of 1934, as amended, as well as the *mobile now* Act, Public Law 115–141, 132 Stat. 1098, Div. P, Title VI, § 603 (Mar. 23, 2018), 47 U.S.C. 151, 154(i), 157, 301, 303, 307, 308, 309, 310,

22. *It is further ordered* that the amendments of parts 2, 90, and 97 of the Commission's rules, as set forth in Appendix A, *are adopted*, effective thirty (30) days after publication in the **Federal Register**.

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

24. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Lists of Subjects in 47 CFR Parts 2, 90, and 97

Frequency allocations, Private land mobile radio services, the Amateur radio service.

Federal Communications Commission.

Marlene Dortch,

Secretary, Federal Communications Commission.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise pages 40 and 41.

■ b. In the list of United States (US) Footnotes, revise footnote US108.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

2670-2690 FIXED 5.410 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.208B 5.415 MOBILE except aeronautical mobile 5.384A Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2670-2690 FIXED 5.410 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A 5.419 Earth exploration-satellite (passive) Radio astronomy Space research (passive)			
5.149 5.412	5.149	5.149	US205	US385	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)		
5.340 5.422			US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation			2700-2900 METEOROLOGICAL AIDS AERONAUTICAL RADIONAVIGATION 5.337 US18 Radiolocation G2	2700-2900	Aviation (87)
5.423 5.424			5.423 G15	5.423 US18	
2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426			2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44	Maritime (80) Private Land Mobile (90)
5.425 5.427			5.427 US44 US316	5.427 US316	
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active)			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active)	3100-3300 Earth exploration-satellite (active) Space research (active) Radiolocation	Private Land Mobile (90)
5.149 5.428			US342	US342	
3300-3400 RADIOLOCATION	3300-3400 RADIOLOCATION Amateur Fixed Mobile	3300-3400 RADIOLOCATION Amateur	3300-3500 RADIOLOCATION G2	3300-3500	
5.149 5.429 5.429A 5.429B 5.430	5.149 5.429C 5.429D	5.149 5.429 5.429E 5.429F			
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.430A Radiolocation	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431A 5.431B Amateur Radiolocation 5.433	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile 5.432 5.432B Radiolocation 5.433			
5.431	5.282	5.282 5.432A	US108 US342	US108 US342	

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International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.431B Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3550 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US108	3500-3550 US108	
			3550-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3550-3600 FIXED MOBILE except aeronautical mobile US105 US433	Citizens Broadband (96)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.434 Radiolocation 5.433	3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation	US105 US107 US245 US433	3600-3650 FIXED FIXED-SATELLITE (space-to-Earth) US107 US245 MOBILE except aeronautical mobile US105 US433	Satellite Communications (25) Citizens Broadband (96)
		5.435	3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4000 FIXED MOBILE except aeronautical mobile NG182 NG457A	Wireless Communications (27)
				4000-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG457A NG182	Satellite Communications (25)
4200-4400 AERONAUTICAL MOBILE (R) 5.436 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A			4400-4940 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A				4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.441A 5.441B 5.442 Radio astronomy			US113 US245 US342 4940-4990	4800-4940 US113 US342 4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)
5.149 5.339 5.443 4990-5000 FIXED MOBILE except aeronautical mobile			5.339 US342 US385 G122 4990-5000 RADIO ASTRONOMY US74 Space research (passive)		
RADIO ASTRONOMY Space research (passive) 5.149			US246		

United States (US) Footnotes

* * * * *

US108 In the band 3300–3550 MHz, notwithstanding removal of the non-Federal allocations from these bands in [insert FCC item number], secondary non-Federal radiolocation and secondary amateur license holders operating as of [insert the effective date the Commission’s Report and Order] may continue to operate on a secondary basis while the Commission finalizes plans to reallocate spectrum in the 3.45–3.55 GHz band. Authorization for these operations will sunset on a future date certain, consistent with the first possible grant of flexible use authorizations to new users in that portion of the band. The date by which non-Federal stations in these services will be required to cease operations in the band 3300–3550 MHz will be set by the Commission in a subsequent decision in its proceeding. In the band 10–10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

§ 90.103 [Amended]

■ 4. In § 90.103, amend the table in paragraph (b) by removing the entries for the “3300 to 3500” MHz and “3500 to 3550” MHz bands.

PART 97—AMATEUR RADIO SERVICE

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

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 6. Amend § 97.207 by revising paragraph (c)(2) to read as follows:

§ 97.207 Space station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 2400–2450 MHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

■ 7. Amend § 97.209 by revising paragraph (b)(9) to read as follows:

§ 97.209 Earth station.

* * * * *

(b) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

■ 8. Amend § 97.211 by revising paragraph (c)(2) to read as follows:

§ 97.211 Space telecommand station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

* * * * *

■ 9. In § 97.301, revise the table in paragraph (a) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
6 m .....	.....	50–54	50–54	(a).
2 m	144–146	144–148	144–148	(a), (k).
1.25 m .....	.....	219–220 .....	.....	(l).
Do .....	.....	222–225 .....	.....	(a).
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	430–440	(a), (b), (m).
33 cm .....	.....	902–928 .....	.....	(a), (b), (e), (n).
23 cm	1240–1300	1240–1300	1240–1300	(b), (d), (o).
13 cm	2300–2310	2300–2310	2300–2310	(d), (p).
Do	2390–2450	2390–2450	2390–2450	(d), (e), (p).
SHF	GHz	GHz	GHz	
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (e), (r).
3 cm	10.0–10.5	10.0–10.5	10.0–10.5	(a), (b), (k).
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(b), (d), (e).
EHF	GHz	GHz	GHz	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	
4 mm	76–81	76–81	76–81	(c), (f), (s).
2.5 mm	122.25–123.00	122.25–123.00	122.25–123.00	(e), (t).
2 mm	134–141	134–141	134–141	(c), (f).
1 mm	241–250	241–250	241–250	(c), (e), (f).
	Above 275	Above 275	Above 275	(f).

* * * * *

■ 10. In § 97.303, revise paragraphs (b) and (f) and remove and reserve paragraph (q) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(b) Amateur stations transmitting in the 70 cm band, the 33 cm band, the 23 cm band, the 5 cm band, the 3 cm band, or the 24.05–24.25 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government in the radiolocation service.

* * * * *

(f) Amateur stations transmitting in the following segments must not cause harmful interference to radio astronomy stations: 76–81 GHz, 136–141 GHz, 241–248 GHz, 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz, or 926–945 GHz. In addition, amateur stations transmitting in the following segments must not cause harmful interference to stations in the Earth exploration-satellite service (passive) or the space research service (passive): 275–286 GHz, 296–306 GHz, 313–356 GHz, 361–365 GHz, 369–392 GHz, 397–399 GHz, 409–411 GHz, 416–434 GHz, 439–467 GHz, 477–502 GHz, 523–527 GHz, 538–581 GHz, 611–630 GHz, 634–654 GHz, 657–692 GHz, 713–718 GHz, 729–733 GHz, 750–754 GHz, 771–776 GHz, 823–846 GHz, 850–854 GHz, 857–862 GHz, 866–882 GHz, 905–928 GHz, 951–956 GHz, 968–973 GHz and 985–990 GHz.

* * * * *

§ 97.305 [Amended]

■ 11. In § 97.305, amend the table in paragraph (c) by removing the entry for the 9 cm band under SHF.

[FR Doc. 2020–22528 Filed 10–8–20; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845

[NFS Case 2020–N016]

RIN 2700–AE59

NASA Federal Acquisition Regulation Supplement: Removal of Use of Government Property for Commercial Work

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to remove the sections governing “Use of Government property for commercial work” from NFS as this only affects the internal Agency administrative

procedures and has no cost or administrative impact on contractors or prospective contractors.

DATES: This final rule is effective December 8, 2020. Comments due on or before November 9, 2020. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Teresa Anthony, NASA Headquarters, Office of Procurement, Procurement Management and Policy Division, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–0104.

SUPPLEMENTARY INFORMATION:

I. Background

NFS Part 1845.301–71 Use of Government property for commercial work, contains procedures and criteria related to the approval of non-government use of NASA equipment on commercial contracts that affect only the internal Agency administrative procedures and have no cost or administrative impact on contractors or prospective contractors. Pursuant to Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, NASA is continually reviewing existing regulations with the objective of reducing or removing any unnecessary, outdated and burdensome requirements that have outlived their intended purpose. Because the 1845.301–71 affect only the internal Agency administrative procedures it can be removed from the regulatory section of the NFS.

NASA does not anticipate opposition to the changes or significant adverse comments. However, if the Agency receives significant adverse comment, it will withdraw this final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the final rule is inappropriate, including challenges to the rule’s underlying premise or approach; or (2) why the final rule will be ineffective or unacceptable without change. In determining whether a comment necessitates withdrawal of this final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation (FAR). Paragraph (a)(1) of the statute requires

that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or from, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it makes non-substantive changes to Agency regulations that has no impact on contractors or prospective offerors as the definitions being removed affect only the internal Agency administrative procedures.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13371

This rule is not subject to Executive Order (E.O.) 13371, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant NFS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and therefore does not require publication for public comment.

VI. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 1845

Government procurement.

Geoffrey Sage,

NASA FAR Supplement Manager.

Accordingly, 48 CFR part 1845 is amended as follows:

PART 1845—GOVERNMENT PROPERTY

■ 1. The authority citation for part 1845 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1845.301–71 [Removed]

■ 2. Remove section 1845.301–71.

[FR Doc. 2020–20468 Filed 10–8–20; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 200221–0062; RTID 0648–XA527]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the D season allowance of the 2020 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 6, 2020, through 2400 hours, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT:

Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The D season allowance of the 2020 TAC of pollock in Statistical Area 610 of the GOA is 9,070 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the D season allowance of the 2020 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,970 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated

groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 5, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22428 Filed 10–6–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 197

Friday, October 9, 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 ENERGY

10 CFR Part 430

[EERE-2020-BT-STD-0015]

RIN 1904-AE87

Energy Conservation Program: Clarifying Amendments to the Error Correction Rule

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Department of Energy (“DOE” or “the Department”) proposes amending its procedures for providing public input on possible corrections to pre-publication drafts of energy conservation standard documents, as informed by a decision by the United States Court of Appeals for the Ninth Circuit regarding the implementation and scope of the existing procedures. This proposal seeks to modify certain aspects of these procedures and to clarify and reflect the Department’s intent with regard to the procedures. In particular, the proposal would clarify that although DOE has elected to utilize a distinct error correction process to receive public input on certain pre-publication draft documents, this process does not in any way restrict, limit, diminish, or eliminate the Secretary’s discretion to determine whether to establish or amend an energy conservation standard, or to determine the appropriate level at which to amend or establish any energy conservation standard.

DATES: DOE will accept comments, data, and information regarding this proposal no later than November 9, 2020. See section IV, “Public Participation,” for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE-2020-BT-STD-0015, by any of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Email:* ErrorCorrection2020STD0015@ee.doe.gov. Include the docket number EERE-2020-BT-STD-0015 or regulatory information number (RIN) 1904-AE87 in the subject line of the message.

(3) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

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

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document.

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

The docket web page can be found at <http://www.regulations.gov/docket?D=EERE-2020-BT-STD-0015>. The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1692 or John.Cymbalsky@ee.doe.gov.

For further information on how to submit a comment or to review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Authority & Background
 - A. Legal Authority
 - B. Background
- II. Summary of Rule Amendments
 - A. Breakdown of Proposed Amendments
- III. Procedural Issues and Regulatory Review
- IV. Public Participation
- V. Approval of the Office of the Secretary

I. Authority & Background

A. Legal Authority

Title III of the Energy Policy and Conservation Act, as amended (“EPCA” or in context, “the Act”), establishes a program within DOE designed to improve the energy efficiency of consumer products (other than automobiles) and of certain industrial equipment. Under this authority and subject to the requirements of EPCA and the Administrative Procedure Act (“APA”), DOE may establish and/or amend energy conservation standards for a variety of covered consumer products and industrial equipment.

To achieve a primary purpose of EPCA, that of improving the energy efficiency of a variety of consumer products and industrial equipment, the Department undertakes certain rulemakings to establish or revise energy conservation standards and to consider amending such standards on a periodic basis. 42 U.S.C. 6295(m)(1). The Act requires DOE to conduct such rulemakings or periodic reviews and provides that DOE may not establish a new or amend an existing standard if the Department determines that such a standard will not be technologically feasible or economically justified, or that the standard will not result in significant conservation of energy or water. See 42 U.S.C. 6295(o)(2)(A), (3). The Act additionally prevents DOE from “prescrib[ing] any amended standard which increases the maximum

allowable energy use [or, for certain products, water use] . . . or decreases the minimum required energy efficiency” of a covered product (referred to as the “anti-backsliding” provision). 42 U.S.C. 6295(o)(1).

When considering whether to establish or to amend existing energy conservation standards, DOE conducts extensive technological analyses and uses considerable amounts of data. Given the complexity of this review process, DOE recognizes the reality that a potential standards regulation may go through the entire rulemaking process and may still contain an error of fact that would result in the Department’s prescribing a standard in regulation that is inconsistent with the analysis conducted by the Department and conflicts with the Secretary’s intent for the rulemaking. If such an error remains uncorrected and the standard takes legal effect, it is at least arguable that EPCA’s anti-backsliding provision could prevent the Department from correcting the error.

The Department initially adopted the error correction rule in 2016 with these considerations in mind, and now seeks to clarify that the procedure is designed to prevent avoidable erroneous outcomes while maintaining in full the Secretary’s authority and discretion to conduct energy conservation standard rulemakings. The proposed amendments set forth in this rulemaking are designed to ensure that the error correction review process does not supplant or limit in any way the Secretary’s authority to determine how any rulemaking should proceed or the ultimate outcome of a rulemaking proceeding.

B. Background

DOE is proposing to amend its procedures for addressing errors in pre-publication draft documents that would, if finalized, set new or amended energy conservation standards for the various products and equipment that DOE regulates. See 10 CFR 430.5. DOE is taking this action as informed by a 2019 decision from the United States Court of Appeals for the Ninth Circuit that held that DOE’s existing error correction rule (“ECR”), as written, imposes a non-discretionary duty upon the Secretary to publish rules within 30 days of completing the error correction process. See *Natural Resources Defense Council v. Perry*, 940 F.3d 1072 (9th Cir. 2019). The court of appeals held that 10 CFR 430.5(f) created a non-discretionary duty to submit draft rules (*i.e.* a pre-publication draft) for publication in the **Federal Register** within 30 days of the close of the error correction submission

period. 940 F.3d at 1079–1080. In response, this proposed rule would amend 10 CFR 430.5 to provide clearly that the rule creates no non-discretionary duty to publish a pre-publication draft that has been posted in accordance with the error correction process. DOE has determined that it is necessary to revise the ECR so that the rule may more accurately meet the very limited purpose originally intended—the Department’s need to prevent energy conservation standards from containing errors or mistakes—while also clarifying that the error correction process does not limit the Secretary’s rulemaking discretion in any way.

To address this issue, DOE’s proposal would clarify that the error correction process provides the public with an additional opportunity to review documents for errors, but without limiting the Secretary’s rulemaking authority. Through this rulemaking, DOE has sought to restructure how the ECR process can identify errors in documents, that if finalized, might be difficult to remedy due to EPCA’s anti-backsliding provision (42 U.S.C. 6295(o)(1)), while maintaining the Secretary’s discretion to determine whether to establish or amend an energy conservation standard. These proposed revisions to the ECR will not impair DOE’s ability to meet its statutorily prescribed deadlines for either establishing or amending energy conservation standards for covered products and equipment. DOE also emphasizes that these proposed revisions to the error correction rule focus solely on DOE’s intent to allow the public to identify possible technical and objective errors in certain pre-publication draft documents and that these proposed revisions would not limit DOE’s discretion in determining how to address the receipt of any new information received that falls outside of the error correction context that DOE is seeking to address. Any new information, regardless of how DOE receives it (*i.e.* whether submitted from an outside party or discovered by DOE on its own) that would affect the policy-making aspects of a given standards rulemaking will be considered within the context of that rulemaking. DOE will evaluate that information as appropriate and determine how best to proceed.

II. Summary of Rule Amendments

The following proposed revisions to the ECR would clarify the rule’s original limited purpose by maintaining the Secretary’s discretion in establishing or amending energy conservation standards, eliminating any possible interpretation that the rule introduces a

mandatory obligation or timeline for the Secretary to publish an energy conservation standard at the completion of the error correction review process, and ensuring the availability of a mechanism to further the specific and limited purpose of avoiding promulgating energy conservation standards that contain errors.

Breakdown of Proposed Amendments

§ 430.5(a): Purpose and Scope

This proposal renames this section (currently named “Scope and purpose”) as “Purpose and Scope” and separates it into two subsections that address the purpose, (a)(1), and the scope, (a)(2), of the regulations in this section.

The general purpose of subsection (1) is to describe the procedures through which the Department may accept and consider public input for the review of a pre-publication draft document’s regulatory text. As envisioned in this proposed rule, neither the governing statutes nor the regulations described here place an affirmative obligation on the Secretary to provide an opportunity to seek error correction requests on any document or to act or respond in light of any submissions properly submitted by the public. The error correction process described herein is strictly a voluntary activity on the part of DOE. Under the proposed rule, the Department would be under no legal obligation to offer the public an additional review period for energy conservation standards beyond that which is already provided under EPCA or other applicable provisions of the APA. The Department intends this opportunity to facilitate greater public involvement in the rulemaking process and to ensure accuracy of its documents.

Subsection (2) describes the scope of the procedure that would be available under this section. The error correction rule would be limited to pre-publication draft documents that could, if finalized, establish or amend energy conservation standards for which the Secretary determines that additional public review for errors is warranted. Under the approach set forth in this proposed rule, it would remain solely within the Secretary’s discretion to subject an energy conservation standard pre-publication draft document to the error correction process; under this approach, not all documents potentially within the scope of the error correction rule must be selected by the Secretary for this review.

DOE proposes to maintain the limitation on the scope of its existing error correction rule that excludes from

the error correction review process those documents pertaining to test procedures, requirements for labeling or certification, and procedures for enforcement. While DOE recognizes the importance of correcting errors in all of its documents, the error-correction process is unnecessary in these other cases because any errors in such cases would clearly not be subject to the anti-backsliding provision and can be addressed in subsequent rulemaking proceedings. The Department maintains its intention to be responsive to input from the public that identifies errors through traditional notice and comment practices for these excluded documents. Here, the Department is sensitive to the particular complexities of energy conservation standards and the potential impacts of the Act's anti-backsliding provision. Accordingly, DOE proposes to continue to limit application of the error correction rule to those pre-publication drafts that could establish or amend energy conservation standards for the various products and equipment that DOE has the authority to regulate under EPCA.

Under this proposed rule, DOE would also continue to exclude energy conservation standards set through the issuance of a direct final rule pursuant to section 325(p)(4) of EPCA. (42 U.S.C. 6295(p)(4)) As noted in the original rule establishing the error correction process, as a practical matter, the mechanisms of the direct final rule process provide an opportunity for correcting errors that is at least as effective as what the error correction rule achieves. If a direct final rule contains an error, the public has an opportunity to identify that error through the comment process provided by statute, and any error that a person would have identified during the error correction process could also be identified in the 110-day comment period required by EPCA for a direct final rule. See 42 U.S.C. 6295(p)(4)(B).

§ 430.5(b): Definitions

This paragraph would continue to set forth several definitions that clarify the meaning of this section and the application of the error correction process. Below, DOE describes changes to the existing definitions in the error correction rule.

The term “*Error*” for the purposes of this section would be redefined to include the revised definition of *Pre-publication draft*. This update would clarify the type of document that the public will encounter online in those instances in which a document is subject to the error correction review process. The phrase “regulatory text” would continue to mean the material

that is to be placed in the Code of Federal Regulations (“CFR”), together with the amendatory instructions by which the rule communicates what should go in the CFR 81 FR 26998, 27000.

The Department is proposing to replace the term “*Rule*” with the term “*Pre-publication draft*” to better describe the type of document that the public will review during the error correction process. This publicly available document will contain the regulatory text and, where appropriate, an accompanying preamble to a draft rule.

§ 430.5(c): Posting of Pre-Publication Drafts

The Department is proposing to revise the title of this section to pair with revised definitions included in section 430.5(b). This section would continue to describe the beginning of the error correction process.

§ 430.5(c)(1): Decision To Post Pre-Publication Drafts Is Discretionary

In subsection (1), the Department is proposing to revise the current regulatory text to clarify that the Secretary’s decision to post pre-publication drafts online is discretionary and voluntary, not the result of a mandatory duty. If the Secretary chooses to post the draft for error correction review, the draft would be available for a maximum of 45 days.

§ 430.5(c)(2): Pre-Publication Draft Availability

Subsection (2) would be revised to remove any suggestion of an implied timeline for the Secretary’s decision to publish a potential rule that has undergone error correction review. This proposed change would further clarify that the error correction rule does not impose a deadline by which the Secretary must submit the document for publication. Subsection (2) would be clarified to emphasize that the public’s review of pre-publication draft documents is available at the sole discretion of the Secretary. The error correction rule does not establish an obligation for the Secretary to post pre-publication draft documents online for every rulemaking that could, if finalized, amend or establish an energy conservation standard. The Secretary is free to determine which energy conservation standard rulemakings are appropriate subjects for this process. Finally, the Secretary would retain the discretion to determine the degree to which these documents may be amended, if at all, after the review process is complete.

§ 430.5(c)(3): Pre-Publication Draft Disclaimer

Subsection (3) would be updated to replace “rule” with the new term “pre-publication draft,” consistent with changes throughout the rule. The Department is proposing to revise the disclaimer notice that will continue to be posted along with any pre-publication draft document that is made available for public review. The proposed text would explain that, through engaging in the error correction process, the Department may conduct additional review of the regulatory text prior to finalizing a potential energy conservation standard to ensure that the text is consistent with the Secretary’s intent and with data and analysis available at the time of posting. It would remain within the Secretary’s discretion to determine the appropriate remedy for any error that may be identified during this process.

§ 430.5(d): Request for Error-Correction Review

This section explains how the public would be able to submit a request to the Department, seeking consideration of a potential error identified in the regulatory text of the pre-publication draft document. This section also identifies what evidence would be accepted in support of the request. The title of the section and references to the current term “rule” used throughout this section would be revised to reflect the updated definitions.

Subsection (1) would be updated to include the revised definition of *Pre-publication draft*. As in the original rule, the public would be able to submit a request for the Secretary to review and correct an error properly identified. The Secretary would not be obligated to take an action, and would have the discretion to choose whether to correct an error properly identified and determined to be consequential. If the error were deemed to be inconsequential, the Secretary would be under no obligation to review and correct the regulatory text.

Subsection (2) would continue to set out the requirements for a properly submitted request. Under these proposed requirements, a request must identify an error, as defined within this section, with particularity by stating what text is erroneous and providing a corrected substitute if possible. If no substitute can be articulated, the request must include an explanation as to why the requester cannot do so.

The Department emphasizes that the review conducted by the public would be limited to identifying errors existing

in the regulatory text of the pre-publication draft document. Disagreements on discretionary questions of policy reflected in a pre-publication draft document would be outside of the scope of the error correction process. The proposed rule seeks to clarify that all policy decisions reflected in the pre-publication draft document would be within the sole discretion of the Secretary both before and after the posting of a pre-publication draft document for error correction review.

As proposed, subsection (3) would make clear that evidence in the record can relate to the accompanying preamble of the pre-publication draft, but that the error itself must originate from the regulatory text. DOE would not consider a request that does not conform to the requirements of this section.

§ 430.5(e): Correction of Pre-Publication Draft Documents

This section would continue to describe the course of action that the Department may take in the event that a request for correction has appropriately identified an error. Under the proposed rule, the error correction rule would impose no requirement for publication and would not establish any obligation on the Secretary to publish a pre-publication draft document as a final rule upon the completion of the error correction process.

The new text introduced here would clarify the Secretary's authority to determine the appropriate remedy for an error identified and would ensure that the Secretary retains the discretion to initiate additional review of the regulatory text so that the text mirrors the Secretary's intent, based on the Secretary's exercise of discretion.

§ 430.5(f): Available Outcomes and Publication

To avoid confusion regarding whether and when the Department may publish a pre-publication draft document as a final rule, this section would be revised to prevent the inference that publication in the **Federal Register** is the only outcome available at the conclusion of the error correction process. Under this proposed rule, application of the error correction rule would be a voluntary activity by the Department, and the Secretary would not be obligated to consider or respond to any request for correction submitted. At the conclusion of the review period, the Secretary would be under no obligation to submit any document for publication.

§ 430.5(g): Alteration of Standards

This section of the regulations is proposed for removal. The current version of this provision states that until such time as a standard has been published in the **Federal Register**, DOE may correct that standard consistent with the APA. DOE is proposing to remove this provision as unnecessary in light of the clarifications being proposed for the remaining sections of 10 CFR 430.5.

§ 430.5(g): Relationship Between Pre-Publication Draft Documents and Prescribed Rules; Finality of Agency's Decision

This section would be renumbered from (h) to (g). The section would include new text to reaffirm that pre-publication draft documents are not final rules or prescribed rules within the meaning of the Act. The Department's posting of these drafts online for error correction review would not finalize the substance of a document under error correction review or end the rulemaking process for that document, including the Department's consideration of any policy decisions pertaining to the rulemaking. The section thus seeks to provide clarity regarding the finality of the agency's decisions.

III. Procedural Issues and Regulatory Review

A. Administrative Procedure Act

Agency rules of procedure and practice, such as the one described in this document, are not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to authority at 5 U.S.C. 553(b)(A). DOE notes that a rule of this nature is also not a substantive rule subject to a 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Nonetheless, DOE is voluntarily offering an opportunity for the public to make comments on the changes set forth in this proposed rule.

B. Review Under Executive Orders 12866

This proposed regulatory action is a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility

analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because this proposed rule is not subject to the requirement to provide prior notice and an opportunity for public comment, it is not subject to the analytical requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This proposed rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act of 1969

DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and

prescribes Federal preemption of State regulations as to energy conservation for the products and equipment that would be subject to this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

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

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that

estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

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

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

J. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR

8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule is not a significant energy action because the ability to correct regulations will not, in itself, have a significant adverse effect on the supply, distribution, or use of energy. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Public Participation

Submission of Comments

DOE will accept comments, data and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and

submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. If you

submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

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

Campaign Form Letters

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

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on September 29, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 30, 2020

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.5 is revised to read as follows:

§ 430.5 Error correction procedures for energy conservation standards rules.

(a) *Purpose and scope.*

(1) The regulations in this section describe the procedures through which the Department of Energy may receive voluntary submissions from the public regarding the identification of possible Errors (as defined in this section) found in the regulatory text of a pre-publication draft of a document that may result in the establishment or amendment of an energy conservation standard issued under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291–6317). The Secretary may take the submissions received under advisement, but is not required to take any action in response to the receipt of a submission.

(2) This section applies only to pre-publication draft documents that may result in establishing or amending the energy conservation standards under the

Act, as identified by the Secretary. This section does not apply to direct final rules issued pursuant to section 325(p)(4) of the Act (42 U.S.C. 6295(p)(4)). Nothing in the procedure set forth in this section in any way restricts, limits, diminishes, or eliminates the Secretary's discretion to determine whether to establish or amend an energy conservation standard, or to determine the appropriate level at which to amend or establish any energy conservation standard.

(b) *Definitions.*

Act means the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291–6317).

Error means an objective mistake in the regulatory text of a pre-publication draft document that may result in the establishment or amendment of an energy conservation standard. Examples of possible mistakes that might give rise to Errors include:

(1) A typographical mistake that causes the regulatory text to differ from how the preamble to the pre-publication draft document describes the potential standard;

(2) A calculation mistake that causes the numerical value of a potential energy conservation standard to differ from what the draft technical support documents accompanying the relevant rulemaking docket would justify; or

(3) A numbering mistake that causes a cross-reference to lead to the wrong text.

Pre-publication draft means a publicly available draft of a potential rule establishing or amending an energy conservation standard under the Act that the Secretary has not finalized and submitted to the Office of the Federal Register for publication.

Secretary means the Secretary of Energy or an official with delegated authority to perform a function of the Secretary of Energy under this section.

(c) *Posting of pre-publication drafts.*

(1) The Secretary may cause a pre-publication draft document to be posted on a publicly accessible website. Once posted, the Secretary ordinarily will keep the pre-publication draft document posted for a period of 45 calendar days, but the Secretary in his or her discretion may shorten or lengthen the time period during which the pre-publication draft document is posted.

(2) Pre-publication drafts may, in the sole discretion of the Secretary, be made available to the public to review for Errors in the document's draft regulatory text. The Secretary is not obligated to make pre-publication drafts available and will determine which documents will be posted on a publicly accessible website for public review.

The posting of a document pursuant to this section does not change its status as a pre-publication draft. With respect to any document posted pursuant to this section, the Secretary retains full discretion both before and after posting to determine whether to establish or amend an energy conservation standard, and the appropriate level at which to amend or establish an energy conservation standard.

(3) Any pre-publication draft document posted pursuant to paragraph (c)(1) of this section shall bear the following disclaimer:

Notice: The text of this pre-publication draft document is not final and is subject to further review by the United States Department of Energy, including, but not limited to, review for correction based on the identification of errors as defined in 10 CFR 430.5. Readers are requested to notify the United States Department of Energy, by email at [EMAIL ADDRESS PROVIDED IN POSTED NOTICE], of any Errors, as defined in such regulations, by no later than midnight on [DATE 45 CALENDAR DAYS AFTER DATE OF POSTING OF THE DOCUMENT ON THE DEPARTMENT'S WEBSITE], in order that the United States Department of Energy may conduct additional review of the regulatory text and make any corrections it determines are appropriate.

(d) *Request for error-correction review.* (1) A person identifying an Error subject to this section may request that the Secretary review a potential Error. Such a request must ordinarily be submitted within 45 calendar days of the posting of the pre-publication draft pursuant to paragraph (c)(1) of this section. The Secretary in his or her discretion may shorten or lengthen the time period during which such requests may be submitted.

(2)(i) A request under this section must identify a potential Error with particularity. The request must specify the regulatory text claimed to be erroneous. The request must also provide text that the requester contends would be a correct substitute. If a requester is unable to identify a correct substitute, the requester may submit a request that states that the requester is unable to determine what text would be correct and explains why the requester is unable to do so. The request must also substantiate the claimed Error by citing evidence from the existing record of the rulemaking, demonstrating that the regulatory text of the pre-publication draft is inconsistent with what the Secretary intended the text to be.

(ii) A person's disagreement with any policy choices or discretionary

decisions that are contained in the pre-publication draft will not constitute a valid basis for a request under this section. All policy and discretionary decisions with regard to whether to establish or amend any conservation standard and, if so, the appropriate level at which to amend or establish that standard, remain within the sole discretion of the Secretary without regard to the procedure established in this section.

(3) The evidence to substantiate a request (or evidence of the Error itself) must be in the record of the rulemaking at the time of posting the pre-publication draft, which may include an accompanying preamble. The Secretary will not consider new evidence submitted in connection with an error-correction request.

(4) A request under this section must be filed in electronic format by email to the address that the disclaimer to the pre-publication draft designates for error-correction requests. Should filing by email not be feasible, the requester should contact the program point of contact designated in the pre-publication draft in order to ascertain an appropriate alternative means of filing an Error-correction request.

(5) A request that does not comply with the requirements of this section will not be considered.

(e) *Correction of pre-publication draft documents.* The Secretary may respond to a request for error-correction review under paragraph (d) of this section, or address an Error discovered on the Secretary's own initiative, at any time the Secretary determines appropriate. The Secretary may determine the appropriate remedy, if any, for an identified Error, and may initiate further review if it is deemed necessary.

(f) *Available outcomes and publication.* (1) The Secretary has no obligation to consider or respond to any error-correction request.

(2) The Secretary is under no obligation to submit a document for publication to the Office of the Federal Register at any time, regardless of whether the time period for submitting an error-correction request has expired.

(g) *Relationship between pre-publication draft documents and prescribed rules; finality of agency's decision.* A rule is considered "prescribed" within the meaning of section 325 of the Act (42 U.S.C. 6295), and thus within the meaning of section 336(b) of the Act (42 U.S.C. 6306(b)), on the date the rule is published in the **Federal Register**. Any pre-publication draft document that the Secretary allows to be reviewed through the Error correction process of this section is not

a final agency action and is not a prescribed rule within the meaning of these provisions of the Act.

[FR Doc. 2020–21985 Filed 10–8–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 201002–0264]

RIN 0694–AH80

Identification and Review of Controls for Certain Foundational Technologies; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking (ANPRM); correction and extension of comment period.

SUMMARY: On August 27, 2020, the Bureau of Industry and Security (BIS) published the advance notice of proposed rulemaking (ANPRM), *Identification and Review of Controls for Certain Foundational Technologies*. This document makes a correction to the August 27 ANPRM to clarify that it is permissible to submit confidential business information in response to the August 27 ANPRM, provided the submitter follows the submission requirements included in the **ADDRESSES** section of this document. The August 27 ANPRM specified that comments must be received on or before October 26, 2020. This document extends the ANPRM’s comment period for fourteen days, so comments must now be received on or before November 9, 2020.

DATES: The comment period for the ANPRM published at 85 FR 52934 on August 27, 2020, is extended. Submit comments on or before November 9, 2020.

ADDRESSES: You may submit comments through either of the following:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS–2020–0029.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and

provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH80. If you seek to submit business confidential information, you must use the portal. BIS does not accept confidential business information by mail or delivery.

FOR FURTHER INFORMATION CONTACT:

Tongele Tongele, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce by: phone (202) 482–0092; fax (202) 482–3355; or email Tongele.Tongele@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2020, the Bureau of Industry and Security (BIS) published the advance notice of proposed rulemaking (ANPRM), *Identification and Review of Controls for Certain Foundational Technologies* (85 FR 52934). See the August 27 ANPRM for a description of the scope of this rulemaking and the public comments that are being requested.

Submission of Confidential Business Information and Extension of Public Comment Period

FR Doc. 2020–18910, published in the August 27, 2020, issue of the **Federal Register**, beginning on page 52934, is corrected by clarifying that it is permissible to submit confidential business information in response to the August 27 ANPRM, provided the submitter follows the submission

requirements included in the **ADDRESSES** section of this document.

The August 27 ANPRM specified that comments must be received on or before October 26, 2020. This document extends the ANPRM’s comment period for fourteen days, so comments must now be received on or before November 9, 2020. BIS is extending the comment period to allow commenters that have already submitted comments, or that are interested in submitting comments in response to the August 27 ANPRM, to have additional time to submit confidential business information. Commenters wishing to submit confidential business information must submit both a public version and a business confidential version in accordance with the instructions described in the **ADDRESSES** section of this document—even if the commenter has already submitted comments in response to the August 27 ANPRM prior to this document.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–22443 Filed 10–6–20; 4:15 pm]

BILLING CODE 3510–33–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

RIN 3142–AA17

Representation-Case Procedures; Voter List Contact Information; Absentee Ballots for Employees on Military Leave; Correction

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The National Labor Relations Board (“NLRB” or “Board”) is correcting a notice of proposed rulemaking that appeared in the **Federal Register** on July 29, 2020. This notice of proposed rulemaking amends the Board’s rules and regulations to eliminate the requirement that employers must, as part of the Board’s voter list requirement, provide available personal email addresses and available home and personal cellular telephone numbers of all eligible voters. It also proposes an amendment providing for absentee mail ballots for employees who are on military leave.

DATES: July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations

Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Corrections

1. In FR Doc. 2020-15596 appearing on page 45554, in the **SUPPLEMENTARY INFORMATION** section, in the **Federal Register** of Wednesday, July 29, 2020, please correct footnote 4 in the 2nd column to read:

“The Act permits the Board to delegate its decisional authority in representation cases to NLRB regional directors. See 29 U.S.C. 153(b). The Board did so in 1961. 26 FR 3911 (May 4, 1961). The General Counsel administratively oversees the regional directors. 29 U.S.C. 153(d).”

2. In FR Doc. 2020-15596 appearing on page 45556, in the **SUPPLEMENTARY INFORMATION** section, in the **Federal Register** of Wednesday, July 29, 2020, please correct footnote 14 in the 1st column to read:

“See generally the responses to the 2017 Request for Information (available at <https://www.nlr.gov/reports-guidance/public-notices/request-information/submissions>).

3. In FR Doc. 2020-15596 appearing on page 45562, in the Supplementary Information section, in the **Federal Register** of Wednesday, July 29, 2020, please correct footnote 55 in the 2nd column to read:

“<https://www.navy.mil/Resources/Frequently-Asked-Questions/>”

4. In FR Doc. 2020-15596 appearing on page 45564, in the **SUPPLEMENTARY INFORMATION** section, in the **Federal Register** of Wednesday, July 29, 2020, make the following correction to the FR citation at line 4 of the first column to read: “84 FR 69544”.

Dated: September 21, 2020.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2020-21207 Filed 10-8-20; 8:45 am]

BILLING CODE 7545-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601 and 1626

RIN 3046-AB19

Update of Commission’s Conciliation Procedures

AGENCY: Equal Employment Opportunity Commission

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or

Commission) proposes amending its procedural rules governing the conciliation process. The Commission believes that providing greater clarity to the conciliation process will enhance the effectiveness of the process and ensure that the Commission meets its statutory obligations.

DATES: Comments are due on or before November 9, 2020.

ADDRESSES: You may submit comments by the following methods:

You may submit comments, identified by RIN Number 3046-AB19, by any of the following methods:

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

- *Fax:* (202) 663-4114. (There is no toll free fax number). Only comments of six or fewer pages will be accepted via fax transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll free numbers).

- *Mail:* Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

- *Hand Delivery/Courier:* Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide.

Docket: For access to comments received, go to <http://www.regulations.gov>. Although copies of comments received are usually also available for review at the Commission’s library, given the EEOC’s current 100% telework status due to the COVID-19 pandemic, the Commission’s library is closed until further notice. Once the Commission’s library is re-opened, copies of comments received in response to the proposed rule will be made available for viewing by appointment only at 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Andrew Maunz, Legal Counsel, Office of Legal Counsel, (202) 663-4609 or andrew.maunz@eEOC.gov.

SUPPLEMENTARY INFORMATION:

Under section 706 of Title VII of the Civil Rights Act of 1964, as amended, Congress instructed that after the Commission finds reasonable cause for any charge, “the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” 42 U.S.C. 2000e-5(b).¹ Congress went on to state that the Commission may only commence a civil action against an employer if “the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission.” *Id.* at § 2000e-5(f).² Accordingly, conciliation is not just a good practice for the Commission’s handling of charges, but also attempting to conciliate after a reasonable cause finding is a statutory requirement and a prerequisite to the Commission filing suit.³

The Commission first published its regulation governing the procedures for conciliation in 1977. 42 FR 55388, 55392 (1977). Subsequent amendments to this regulation have largely been minor changes to account for organizational changes at the Commission or additions of new laws within the Commission’s jurisdiction, such as the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). 48 FR 19165 (1983); 49 FR 13024 (1984); 49 FR 13874 (1984); 52 FR 26959, (1987); 54 FR 32061 (1989); 56 FR 9624-25 (1991) (adding the ADA); 71 FR 26828 (2006); 74 FR 63982 (2009) (adding GINA). Since 1977, the Commission has not significantly changed the substance of its regulatory procedures governing conciliation.

In 2015, following a series of cases challenging the adequacy of the

¹ The Commission, or its officers or employees, cannot make public anything said or done during these informal methods “without the written consent of the person concerned.” *Id.*

² This includes civil actions brought pursuant to section 707 of Title VII, which states that any action the Commission brings under that section shall be “in accordance with the procedures” of section 706. 42 U.S.C. 2000e-6(e); *see also id.* at § 2000e-6(c) (“The Commission shall carry out such functions in accordance with subsections (d) and (e) of the section).

³ The only exception to the Commission’s obligation to attempt to conciliate is an action for “temporary or preliminary relief” under section 706(f)(2). 42 U.S.C. 2000e-5(f)(2).

Commission's conciliation efforts,⁴ the Supreme Court addressed the Commission's conciliation requirements in the case *Mach Mining, LLC v. EEOC*, 575 U.S. 480 (2015). In *Mach Mining*, the Court noted that conciliation plays an important role in achieving Congress's goal of ending employment discrimination. 575 U.S. at 486. The Court observed that Title VII not only required the EEOC to attempt to engage in conciliation but provided "concrete standards pertaining to what that endeavor must entail." *Id.* at 488. According to the Court, the statute's specified methods of "conference, conciliation, and persuasion . . . necessarily involve communication between parties, including the exchange of information and views." *Id.* To meet its statutory obligations the Commission must, at a minimum, "tell the employer about the claim—essentially, what practice has harmed which person or class—and must provide the employer with an opportunity to discuss the matter in an effort to achieve voluntary compliance." *Id.* The Court held that the Commission's compliance with its statutory conciliation obligations could be subject to judicial review. *Id.* However, the scope of that review will generally be limited to examining whether the Commission afforded "the employer a chance to discuss and rectify a specified discriminatory practice." *Id.* at 489. According to the Court, such judicial review would likely, at most, consist of a review of affidavits from the parties on whether the EEOC has fulfilled its statutory obligations. *Id.* at 494–95.⁵

The Court noted the EEOC's "wide latitude" and "expansive discretion"

⁴ See, e.g., *EEOC v. Asplundh Tree Expert Co.*, 340 F. 3d 1256, 1260 (11th Cir. 2003) (EEOC violated its Title VII duty to conciliate, warranting attorney fee award, by failing to identify any theory of liability); *EEOC v. CRST Van Expedited, Inc.*, 679 F. 3d 657, 676 (8th Cir. 2012) (EEOC's failure to identify class members or investigate claims deprived employer of a meaningful conciliation); *EEOC v. Johnson & Higgins, Inc.*, 91 F. 3d 1529, 1534 (2d Cir. 1996); *EEOC v. Klinger Elec. Corp.* 636 F. 2d 104, 107 (5th Cir. 1981) (application of a three part inquiry to EEOC's duty to conciliate); *EEOC v. Keeco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984); *EEOC v. Radiator Specialty Co.*, 610 F. 2d 178, 183 (4th Cir. 1979) (requirement that EEOC's conciliation efforts reach a minimum of good faith).

⁵ After *Mach Mining*, courts have addressed the extent to which a defendant can seek review of the conciliation process. See *EEOC v. Wal-Mart Stores, Texas, LLC*, ___ F.Supp.3d ___, *3–4 (S.D. Tex. 2019) (holding that it would allow only limited discovery related to conciliation, and not on the "substance and detail of conciliation discussions"); *EEOC v. Blinded Veterans Association*, 128 F. Supp.3d 33, 44 (D.D.C. 2015) (stating that courts' review of conciliation extends only to whether the EEOC attempted to engage the employer in an effort to remedy the alleged discrimination and not to the parties' positions during conciliation).

over the conciliation process when it crafted the narrow judicial review it said was appropriate under Title VII. *Id.* at 488–89. Such broad discretion in its conciliation processes, and other areas, means the Commission "wields significant power." *EEOC v. Freeman*, 778 F.3d 463, 472 (4th Cir. 2015) (Agee, J., concurring). Recognizing this power, it is important that the Commission clearly articulate the steps of the conciliation process so that the parties understand what to expect.

The Commission acknowledges that the preferred method for remedying employment discrimination is through "cooperation and voluntary compliance," including conciliation. See *Mach Mining*, 575 U.S. at 486 ("in pursuing the goal of bringing employment discrimination to an end, Congress chose 'cooperation and voluntary compliance' as its preferred means"). Prior to Supreme Court's decision in *Mach Mining*, the Commission was in the process of developing internal standards for more robust and consistent conciliation efforts in the form of the Quality Enforcement Practices (QEP), which set forth specific action steps to promote sharing of information toward voluntary resolutions.⁶ Following the *Mach Mining* decision, the then-Chair and General Counsel issued internal guidance on how to ensure that the EEOC's conciliation processes conformed to the requirements outlined by the Supreme Court. In the Spring of 2017, the EEOC's Office of Field Programs implemented agency-wide "Conciliation and Negotiation Training," a significant portion of which covered what the EEOC must do to satisfy its statutory duty to attempt conciliation. Over 800 EEOC staff participated in this training, including all investigators and their supervisors. Since then, the EEOC has endeavored to train new investigators on the Commission's conciliation obligations.

Historically, the EEOC has elected to not adopt detailed regulations to govern its conciliation efforts. The Commission took this position in the belief that retaining flexibility over the conciliation process would more effectively accomplish its goal of preventing and remediating employment discrimination. See *Mach Mining*, 575 U.S. at 487 ("The Government highlights the broad leeway the statute gives the EEOC to decide how to engage in, and

⁶ While the QEPs were in development prior to the Supreme Court issuing *Mach Mining*, they were not published until September 2015, several months after the decision. <https://www.eeoc.gov/quality-practices-effective-investigations-and-conciliations>.

when to give up on, conciliation."'). The Commission still believes that it is important to maintain a flexible approach to conciliation, and that the Commission has broad latitude over what it offers and accepts in conciliation. However, notwithstanding EEOC's efforts, including the extensive training outlined above, EEOC's conciliation efforts resolve less than half of the charges where a reasonable cause finding has been made.

Between fiscal years 2016 and 2019, only 41.23% of the EEOC's conciliations were successful. While this number is a slight improvement over the previous four fiscal years,⁷ the Commission is successfully achieving Congress's "preferred means" of eliminating employment discrimination less than half the time.⁸ Furthermore, the Commission estimates that one third of respondents (employers) who receive a reasonable cause finding decline to participate in conciliation. While there are various reasons why a respondent decides not to participate in conciliation, such a widespread rejection of the process suggests a broadly held view that the process does not meet its full potential in providing value to all parties. These results have led the Commission to conclude that a change in approach is necessary. Through this rulemaking, the Commission is choosing to exercise its "wide latitude" to fulfill its Congressional mandate of ending employment discrimination through "cooperation and voluntary compliance" by clearly outlining the steps necessary to carry out its statutory conciliation responsibility.

The Commission recognizes that after *Mach Mining*, its conciliation process is subject to judicial review. The purpose of these proposed changes is not to provide an additional avenue for litigation by respondents or charging parties. Indeed, Title VII provides that "nothing said or done during and as part of" conciliation may be publicized by the Commission or "used as evidence in a subsequent proceeding without the written consent of the persons concerned." 42 U.S.C. 2000e–5(b); *Mach Mining*, 575 U.S. at 492–93 (stating that

⁷ For fiscal years 2012 through 2015, the rate was 40%. See EEOC Statistics, All Statutes <https://www.eeoc.gov/enforcement/all-statutes-charges-filed-eeoc-fy-1997-fy-2019>.

⁸ Congress has remained interested in the EEOC's conciliation efforts well after the initial passing of Title VII. See e.g., Senate Health Education Labor and Pensions Minority Staff Report, November 24, 2014 at p. 4, <https://www.help.senate.gov/imo/media/doc/FINAL%20EEOC%20Report%20with%20Appendix.pdf> ("EEOC is not consistently meeting its statutory mandate to attempt to resolve discrimination disputes out of court.").

judicial review of conciliation that delves too deep would violate Title VII's confidentiality provision). Rather, the purpose of these proposed regulations is to strengthen the Commission's own practices.⁹ The Commission is seeking input through the notice and comment process on the question of whether these proposed amendments will result in additional challenges to the Commission's conciliation efforts, and whether such challenges would delay or adversely impact litigation brought by the Commission.

Accordingly, the Commission is proposing to amend its procedural conciliation regulations governing Title VII, ADA, and GINA cases to outline steps that the Commission will take in the conciliation process. Articulating these steps meets the obligations highlighted in *Mach Mining*: (1) Inform the employer about the claim, including "what practice has harmed which person or class" and (2) "provide the employer with an opportunity to discuss the matter in an effort to achieve voluntary compliance." *Id.* at 488.

The Commission believes these steps will enhance efficiency and better encourage a negotiated resolution when possible. Among the many values of resolving a charge in conciliation is remedying unlawful discrimination more quickly and avoiding the risks inherent in litigation.

The Commission proposes to require that in any conciliation the Commission will provide to the respondent, if it has not already done so: (1) A summary of the facts and non-privileged information that the Commission relied on in its reasonable cause finding, and in the event that it is anticipated that a claims process will be used subsequently to identify aggrieved individuals, the criteria that will be used to identify victims from the pool of potential class members; (2) a summary of the Commission's legal basis for finding reasonable cause, including an explanation as to how the law was applied to the facts, as well as non-privileged information it obtained during the course of its investigation that raised doubt that employment discrimination had occurred; (3) the basis for any relief sought, including the calculations underlying the initial conciliation proposal; and (4) identification of a systemic, class, or

⁹ Any judicial review that does take place is limited. As *Mach Mining* explained, the scope of judicial review will generally be limited to examining whether the Commission afforded "the employer a chance to discuss and rectify a specified discriminatory practice." *Id.* at 489. As noted above, a sworn affidavit from EEOC stating it had met its obligations "will usually suffice." *Id.* at 494.

pattern or practice designation. The Commission also proposes to specify that the respondent participating in conciliation will have at least 14 calendar days to respond to the initial conciliation proposal from the Commission. Commission is seeking input through the notice and comment process on all of these requirements, and specifically, the Commission would like input on whether it should specify that its disclosures must only be done in writing or if it should allow for oral disclosures as well.

In addition, the Commission is also obligated to undertake conciliation efforts pursuant to the Age Discrimination in Employment Act (ADEA). Specifically, the Commission must "seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, or persuasion." 29 U.S.C. 626(d)(2). Accordingly, the Commission is proposing to amend its ADEA regulations to add the same¹⁰ requirements to the ADEA conciliation process.

These steps in cases under Title VII, ADA, GINA, and the ADEA, will support the EEOC's statutory obligations in the conciliation process, provide a better opportunity to resolve the matter, and remedy unlawful discrimination without litigation.

Regulatory Procedures

Executive Order 12866

This proposed rule has been determined to be significant under E.O. 12866 by the Office of Management and Budget because it raises novel legal or policy issues arising out of legal mandates or the President's priorities. The proposed rule will not have an annual effect on the economy of \$100 million or more, nor will it adversely affect the economy in any material way. Thus, it is not economically significant for purposes of E.O. 12866 review. However, the rule will have many benefits as demonstrated by the following cost-benefit analysis.

The proposed rule imposes no direct costs on any third parties and only imposes requirements on the EEOC itself. These requirements, if implemented, will likely require the EEOC to conduct training of staff and change its processes for investigations and conciliations to ensure that it is complying with the new regulation. While these changes and training would likely be absorbed within the

¹⁰ While the requirements are substantively the same, the language in the ADEA section is slightly different due to the language of section 7(d)(2) of the ADEA.

Commission's normal operating expenses, any additional expenses that the agency would incur could be offset by cost savings derived from these changes. For example, charging parties often file Freedom of Information Act (FOIA) requests with the Commission after receiving a "right to sue notice" in order to receive the charge file. If more cases are resolved in conciliation, these cases would not result in right to sue notices and the Commission would receive fewer FOIA requests, resulting in cost savings for the government.

Furthermore, while the parties ultimately determine whether a conciliation agreement is reached, if the Commission is able to conciliate more cases successfully, it will benefit employees, employers, and the economy as a whole. With respect to employees, an increase in successful conciliations will result in more employees receiving remedies for the discrimination they suffered and/or within an accelerated timeframe. Many employees who receive reasonable cause findings are unable to obtain any relief without conciliation because they do not pursue litigation for fiscal, emotional, or other reasons, or even if they do pursue litigation, ultimately do not attain relief. Even employees who ultimately would otherwise be successful in litigation may benefit from a conciliation agreement because they would then receive remedies sooner and avoid the time, cost, stress, and uncertainty of litigation.

Employers will also receive a net benefit from the EEOC conciliating cases more successfully. In some cases, conciliation agreements may provide an opportunity for employers to more quickly correct any discriminatory conduct or policies and seek compliance assistance from the EEOC. Additionally, while employers pay \$45,466¹¹ on average to settle cases in conciliation, they will save resources and money by avoiding litigation. It is difficult to quantify the average cost of litigating an employment discrimination case for an employer because the cost of a case depends on several factors, such as the complexity of the case, length of the litigation, and the jurisdiction in which it is litigated.¹²

¹¹ This was the average for fiscal year 2019.

¹² This analysis focuses only on an employer's litigation costs because most plaintiff-side attorneys use contingency-fee arrangements for pursuing claims, in which the attorney receives a portion of the recovery and charges little or nothing if no recovery is obtained. See Martindale-Nolo Research, *Wrongful Termination Claims: How Much Does a Lawyer Cost?* (Nov. 14, 2019), available at <https://www.lawyers.com/legal-info/labor-employment-law/wrongful-termination/wrongful-termination->

The stage at which litigation concludes has a large effect on litigation costs—attorneys' fees and other litigation expenses are significantly higher for cases that go through trial, as opposed to those that end in summary judgment. For example, in 2013, one experienced defense attorney estimated that the average attorney's fees for employers for cases that end in summary judgment was between \$75,000–\$125,000; while cases that go to trial average \$175,000–\$250,000 in fees.¹³ Factoring for inflationary changes in legal fees, the present value of those costs is closer to \$83,000–\$139,000 for cases ending in summary judgment and \$195,000–\$279,000 for cases that end after a trial.¹⁴ Taking the middle of each range in present value results in average costs of \$111,000 for cases ending in summary judgment and \$237,000 for cases that end after trial. We recognize that many employers will find these fee estimates to be low, but because there is insufficient, publicly available data for calculating the amount that employers have expended in defending against a charge through conciliation¹⁵ and which otherwise

claims-how-much-does-a-lawyer-cost.html (noting that 75% of plaintiffs lawyers in employment litigation use contingency fee arrangements and another 15% use a combination of a contingency fee and hourly rate). Thus, more frequent conciliation will save litigation costs for those few plaintiffs who pay their attorneys an hourly rate.

¹³ John Hyman, *How Much Does it Cost to Defend an Employment Lawsuit*, in *Workforce*, (May 14, 2013), available at <https://www.workforce.com/news/how-much-does-it-cost-to-defend-an-employment-lawsuit>.

¹⁴ These calculations were made using the Department of Labor Bureau of Labor Statistics' (BLS) Consumer Price Index calculator, available at https://www.bls.gov/data/inflation_calculator.htm. These increases are likely conservative, as they are similar to increases in legal service costs over a shorter time frame. Historical data for the BLS Producer Price Index for Legal Services in the Mid-Atlantic region, available at https://www.bls.gov/regions/mid-atlantic/data/producerpriceindexlegal_us_table.htm, reveals that average costs for employment and labor legal services increased from 100 in December 2014 (the earliest data available) to 109.9 in April 2020 (the most recent non-“preliminary” data), an increase of approximately 10%. Similarly, the US Department of Justice's USAO Attorney's Fees Matrix, which only measures the change in fees between 2015–2020 across the legal field, reveals a roughly 12% change in hourly rate for the most experienced attorneys in the District of Columbia. See <https://www.justice.gov/usao-dc/page/file/1305941/download>.

¹⁵ “There do not appear to be any reliable statistics on the percentage of employers who retained outside counsel to defend charges filed with the EEOC.” Philip J. Moss, *The Cost of Employment Discrimination Claims*, 28 *Maine Bar J.* 24, 25 (Winter 2013). Supposing “conservatively” that 50% of employers relied on outside counsel at an hourly rate averaging \$250 (in 2013) and invested 20 hours in cases during the EEO process, *Id.*, employers would average \$2,500 in legal costs during the EEO process ($\$250 \times 20 \text{ hours} \times 0.5$), which in present value would average \$2,792. The

would be subtracted for purposes of this analysis, we believe such a conservative estimate is appropriate.

To determine the average amount spent on attorney's fees, the Commission also must consider the number of cases that were the subject of conciliation that are either resolved in summary judgment or proceed to trial. The majority of cases of employment discrimination are not tried.¹⁶ Some studies suggest that two-thirds or more of employment discrimination lawsuits that are filed in court end in summary judgment.¹⁷ Those statistics, however, include cases filed in court after the EEOC dismissed the charge without a reasonable cause determination. In conciliation cases, by contrast, the EEOC has conducted an investigation and found reasonable cause to conclude that discrimination may have occurred. We believe it is reasonable to assume that more of these latter cases will survive summary judgment. With this assumption, the average litigation cost to employers is \$174,000.¹⁸

Resolving more cases through conciliation will be beneficial to the economy as a whole because the litigation costs that the parties save can be put towards more productive uses, such as expanding businesses and hiring more employees. It is difficult to quantify how many cases in which the Commission finds reasonable cause end

costs for employers who use in-house counsel or human resource professionals to handle their EEOC charges are more difficult to quantify.

¹⁶ Paul D. Seyfarth, *Efficiently and Effectively Defending Employment Discrimination Cases*, 63 *AmJur Trials* 127, § 81 (Supp. 2020) (“It is an undeniable fact that most employment discrimination cases do not get tried; they are either settled or disposed of via summary judgment.”).

¹⁷ Charlotte S. Alexander, Nathan Dahlberg, Anne M. Tucker, *The Shadow Judiciary*, 39 *Rev. of Lit.* 303 (2020) (Table 3) (finding that among summary judgment motions in employment cases handled by magistrate judges in the Northern District of Georgia, 78% are granted in part or in full); Deborah Thompson Eisenberg, *Stopped at the Starting Gate: The Overuse of Summary Judgment in Equal Pay Cases*, 57 *N.Y. L. Sch. L. Rev.* 815, 817 (2012/2013) (finding that approximately two-thirds of all equal pay act cases end at the summary judgment stage).

¹⁸ Average summary judgment fees (\$111,000) + average trial fees (\$237,000)/2 = \$174,000. This figure is within the range of other estimates for average attorney fee costs. See AmTrust Financial, *Employment Practices Liability (EPLI) Claims Trends, Stats & Examples*, available at <https://amtrustfinancial.com/blog/insurance-products/top-trends-employment-practices-liability-claims> (asserting that attorney fee costs in 2018 averaged \$160,000, which in present value would amount to \$167,000); Moss, *supra* note 7 (citing Blasi and Doherty, *California Employment Discrimination Law and its Enforcement: The Fair Employment and Housing Act at \$0*, UCLA–RAND Center for Law and Public Policy (2010)) (estimating costs to employers in state-level employment discrimination cases in California in 2010 at \$150,000, which taken to present value would average approximately \$180,000).

up being litigated in court because, if the EEOC decides to not litigate the case, the Commission does not track lawsuits filed by private plaintiffs. Cases in which the EEOC found reasonable cause are the most likely to be litigated by a private plaintiff because the EEOC has already determined that there is reasonable cause to believe that the case has merit. While not all cases in which reasonable cause is found and conciliation is unsuccessful are litigated, there is reason to believe that a significant portion are. The Commission itself files lawsuits in roughly 10% of the cases in which reasonable cause is found and conciliation is not successful.¹⁹ It is reasonable to believe that private plaintiffs file lawsuits in at least an additional 40% of cases, so that overall half the cases in which reasonable cause is found, but conciliation is unsuccessful, end up being litigated in court.²⁰

Using the numbers above, if the Commission successfully conciliated only 100 more cases each year, that would save the economy over \$4 million in litigation costs.²¹

Therefore, the Commission's proposed rule, which establishes basic information disclosure requirements that will make it more likely that employers have a better understanding of the EEOC's position in conciliation and, thus, make it more likely that the conciliation will be successful, will result in significant economic benefits if it becomes a final rule and is successfully implemented.

Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action

¹⁹ For fiscal year 2019, the Commission filed 157 lawsuits. EEOC Litigation Statistics, <https://www.eeoc.gov/statistics/eeoc-litigation-statistics-fy-1997-through-fy-2019>. Overall, in fiscal year 2019, there were 1,427 cases in which the Commission found reasonable cause but conciliation was unsuccessful. <https://www.eeoc.gov/statistics/all-statutes-charges-filed-eeoc-fy-1997-fy-2019>.

²⁰ To give some sense of the scope of cases, federal courts reported that 42,053 “Civil Rights” cases were filed in federal court during the most recent year. https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630_2020.pdf. While not all these civil rights cases involve employment discrimination, and this number would include cases where a private plaintiff filed suit after the EEOC did not find reasonable cause, it illustrates that the assumption—that half of the roughly 1,400 cases in which conciliation is unsuccessful end up in court—is likely a low estimate.

²¹ 100 successful conciliations \times \$45,466 (average conciliation for fiscal year 19) = \$4,546,600. However, this number is offset by the litigation costs saved in 50 cases (assuming half the cases would have ended in litigation): $50 \times \$174,000 = \$8,700,000$. $\$8,700,000 - \$4,546,600 = \$4,153,400$ in savings for every 100 cases that are conciliated.

because it will not impose total costs greater than \$0. As described above, the Commission's rule will result in more successful conciliations and therefore, overall cost reduction, so this is considered a deregulatory action. Details on the expected impacts of the proposed rule can be found in the agency's analysis above.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees and agencies of the federal government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

While the Commission believes the proposed rule is a rule of agency procedure that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996), it will still follow the reporting requirement of 5 U.S.C. 801.

List of Subjects in 29 CFR Parts 1601 and 1626

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Janet Dhillon,
Chair.

For the reasons set forth in the preamble, the Commission proposes to amend 29 CFR parts 1601 and 1626 as follows:

PART 1601—PROCEDURAL REGULATION

- 1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff-11.

- 2. Amend § 1601.24 by adding paragraphs (d) through (f) to read as follows:

§ 1601.24 Conciliation: Procedure and authority

* * * * *

(d) In any conciliation process pursuant to this section, after the respondent has agreed to engage in conciliation, the Commission will:

(1) To the extent it has not already done so, provide the respondent with a written summary of the known facts and non-privileged information that the Commission relied on in its reasonable cause finding, including identifying known aggrieved individuals or known groups of aggrieved individuals for whom relief is being sought, unless the individual(s) have requested anonymity. In the event that it is anticipated that a claims process will be used subsequently to identify aggrieved individuals, to the extent it has not already done so, identify for respondent the criteria that will be used to identify victims from the pool of potential class members; In cases in which that information does not provide an accurate assessment of the size of the class, for example, in harassment or reasonable accommodation cases, the Commission may, but is not required to provide more detail to respondent, such as the identities of the harassers or supervisors, or a description of the testimony or facts we have gathered from identified class members during the investigation. The Commission may also use its discretion to determine whether to disclose current class size and, if class size is expected to grow, an estimate of potential additional class members;

(2) To the extent it has not already done so, provide the respondent with a summary of the Commission's legal basis for finding reasonable cause, including an explanation as to how the law was applied to the facts. If there is material information that the Commission obtained during its investigation that caused the Commission to doubt that there was reasonable cause to believe discrimination occurred, if it has not already done so, the Commission will explain how it was able to determine there was reasonable cause despite this information. In addition, the

Commission may, but is not required to, provide a response to the defenses raised by respondent;

(3) Provide the respondent with the basis for monetary or other relief, including the calculations underlying the initial conciliation proposal, and an explanation thereof;

(4) If it has not already done so, and if there is a designation at the time of the conciliation, advise the respondent that the Commission has designated the case as systemic, class, or pattern or practice as well as the basis for the designation; and

(5) Provide the respondent at least 14 calendar days to respond to the Commission's initial conciliation proposal.

(e) The Commission shall not disclose any information pursuant to subsection (d) where another federal law prohibits disclosure of that information or where the information is protected by privilege.

(f) Any information the Commission provides pursuant to paragraph (d) of this section to the Respondent will also be provided to the charging party and other aggrieved individuals upon request.

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

- 3. The authority citation continues to read as follows:

Authority: Sec. 9, 81 Stat.605, 29 U.S.C. 628; sec. 2, Reorg Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

- 4. Amend § 1626.12 by redesignating as paragraph (a) and adding paragraphs (b) through (d) to read as follows:

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

* * * * *

(b) In any conciliation process pursuant to this section the Commission will:

(1) If it has not already done so, provide the respondent with a written summary of the known facts and non-privileged information that form the basis of the allegation(s), including identifying known aggrieved individuals or known groups of aggrieved individuals, for whom relief is being sought, but not if the individual(s) have requested anonymity. In the event that it is anticipated that a claims process will be used subsequently to identify aggrieved individuals, if it has not already done so, identify for respondent the criteria that will be used to identify victims from the pool of potential class members;

(2) If it has not already done so, provide the respondent with a summary of the legal basis for the allegation(s). In addition, the Commission may, but is not required to provide a response to the defenses raised by respondent;

(3) Provide the basis for any monetary or other relief, including the calculations underlying the initial conciliation proposal, and an explanation thereof;

(4) If it has not already done so, advise the respondent that the Commission has designated the case as systemic, class, or pattern or practice, if the designation has been made at the time of the conciliation, and the basis for the designation; and

(5) Provide the respondent at least 14 calendar days to respond to the Commission's initial conciliation proposal.

(c) The Commission shall not disclose any information pursuant to subsection (b) where another federal law prohibits disclosure of that information or where the information is protected by privilege.

(d) Any information the Commission provides pursuant to subsection (b) to the respondent will also be provided to the charging party or other aggrieved individuals upon request.

■ 5. Amend § 1626.15 paragraph (d) by adding the following sentence at the end to read as follows:

§ 1626.15 Commission enforcement

* * * * *

(d) * * * Any conciliation process under this paragraph shall follow the procedures as described in section 1626.12.

* * * * *

[FR Doc. 2020-21550 Filed 10-8-20; 8:45 am]

BILLING CODE 6570-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0161; FRL-10014-82-Region 6]

Air Plan Approval; Texas; Reasonable Further Progress Plan for the Dallas-Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress

(RFP) requirements for the Dallas-Fort Worth (DFW) serious ozone nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is proposing to approve the RFP demonstration and associated motor vehicle emission budgets, contingency measures should the area fail to make RFP emissions reductions or attain the 2008 ozone NAAQS by the applicable attainment date, and a revised 2011 base year emissions inventory for the DFW area.

DATES: Written comments must be received on or before November 9, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0161, at <https://www.regulations.gov> or via email to paige.carrie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige, 214-665-6521, paige.carrie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-6521, paige.carrie@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a

delay in processing mail and courier or hand deliveries may not be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Introduction

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA a SIP revision addressing RFP requirements for the 2008 8-hour ozone NAAQS for the two serious ozone nonattainment areas in Texas (“the TCEQ submittal”). These two areas are the DFW and the Houston-Galveston-Brazoria (HGB) areas. The TCEQ submittal also establishes motor vehicle emissions budgets (MVEBs) for the year 2020 and includes contingency measures for each of the DFW and HGB areas, should either area fail to make reasonable further progress, or to attain the NAAQS by the applicable attainment date.

In this rulemaking action, we are addressing only that portion of the TCEQ submittal that refers to the DFW area. We are proposing to approve the RFP demonstration and associated contingency measures for RFP or failure to attain and MVEBs for the DFW area. We are also proposing to approve a revised 2011 base year emissions inventory (EI) for the DFW area. The portion of the TCEQ submittal that refers to the HGB area will be addressed in a separate rulemaking action.

II. Background

In 2008, we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008).¹ The DFW area was classified as a moderate ozone nonattainment area for the 2008 ozone NAAQS² and given an attainment date

¹ On October 1, 2015, the EPA promulgated a more protective 8-hour ozone standard of 0.070 ppm (80 FR 65292, October 26, 2015). On April 30, 2018, the EPA promulgated designations under the 2015 ozone standard (83 FR 25776, June 4, 2018) and in that action, the EPA designated Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise counties as a marginal ozone nonattainment area. The RFP plan is not required for a marginal nonattainment area under the 2015 ozone standard. The TCEQ submittal does not specifically address the 2015 ozone standard, but provides progress toward attaining the new standard. For more information on ozone, see our Technical Support Document (TSD) in the docket for this rulemaking and visit <https://www.epa.gov/ground-level-ozone-pollution>.

² Throughout this document, we refer to the 2008 8-hour ozone NAAQS as the “2008 ozone NAAQS.”

of no later than December 31, 2018 (77 FR 30088, May 21, 2012). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, Rockwall, and Wise counties.

On December 23, 2014, the D.C. Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464–69 (D.C. Cir. 2014). Consistent with the court's decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS and set the attainment deadline for all 2008 ozone moderate nonattainment areas, including the DFW area as July 20, 2018 (80 FR 12264, March 6, 2015). The DFW area did not meet the moderate attainment date and was reclassified as a serious ozone nonattainment area (84 FR 44238, August 23, 2019).³ Accordingly, the State was required to submit revisions to the DFW SIP to meet serious area requirements.

The CAA requires that areas designated as nonattainment for ozone and classified as moderate or worse demonstrate RFP by reducing emissions of ozone precursors (nitrogen oxides or NO_x and volatile organic compounds or VOC).⁴ The EPA's final rule to implement the 2008 ozone standard (the "SIP Requirements Rule" or "SRR") addressed, among other things, the RFP control and planning obligations as they apply to areas designated nonattainment for the 2008 ozone standard (80 FR 12264). In the SRR, RFP was defined (for the purposes of the 2008 ozone standard) as meaning the progress reductions required under sections 172(c)(2) and 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA (80 FR 12264, 12313).⁵ RFP plans must also include a MVEB, which provides the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP (57 FR 13498, 13558, April 16, 1992).

³ For more on the history of ozone in the DFW area, see our TSD in the docket for this rulemaking and visit <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-ozone-history>.

⁴ See CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110.

⁵ See 40 CFR 51.1110.

The RFP plan for the DFW moderate ozone nonattainment area for the 2008 ozone NAAQS was approved on December 7, 2016 and it demonstrated required emissions reductions through the end of calendar year 2017 (81 FR 88124). Because the DFW area was reclassified as a serious ozone nonattainment area, pursuant to CAA section 182(c)(2) and 40 CFR 51.1110, the RFP SIP for the DFW area must demonstrate NO_x and/or VOC emissions reductions of at least 3 percent for each of calendar years 2018, 2019, and 2020 and an additional 3 percent for contingency measures in 2021, should the area fail to meet RFP or fail to attain the 2008 ozone NAAQS by the July 20, 2021 attainment date. Finally, the emissions reductions must occur within the DFW area.

III. EPA's Evaluation of the TCEQ Submittal

We reviewed the TCEQ submittal for consistency with the requirements of the CAA and EPA regulations and guidance. A summary of our analysis and findings are provided below. For a more detailed discussion of our evaluation, please see our TSD in the docket for this rulemaking action.

A. Revised 2011 Base Year Emissions Inventory

An emissions inventory (EI) is a collection of data that lists, by source, the amount of air pollutants discharged into the atmosphere, during a year or other time period. The EI includes estimates of the emissions associated with the air quality problems in the area (in this case, NO_x and VOC) from various pollution sources.

Pursuant to the EI regulations at 40 CFR 51.1115, the State submitted a base year EI for the 2008 ozone NAAQS, which we approved for the DFW area.⁶ The State submitted a revised 2011 base year EI for the moderate nonattainment area RFP plan for the DFW area, which we approved (81 FR 88124). In the TCEQ submittal, the State further refined the 2011 base year EI for the DFW area. Pursuant to 40 CFR 51.1110(b), the values in the submitted 2011 base year EI are actual ozone season day emissions. Pursuant to CAA sections 172(c)(3) and 182(b)(1), the submitted 2011 base year EI consists of

⁶ See 80 FR 9204, February 20, 2015.

NO_x and VOC emissions from all sources inside the nonattainment area. Compared with the 2011 base year EI that we previously approved at 81 FR 88124 (December 7, 2016), the submitted 2011 base year NO_x emissions decrease by 26.97 tons per day (tpd) and VOC emissions increase by 14.94 tpd. The revised 2011 base year EI was developed using EPA-approved guidelines for point, mobile, and area emission sources. Point source emissions data for 2011 were pulled from the State of Texas Air Reporting System (STARS) database—these data also include all authorized/planned Startup, Shutdown and Maintenance emissions.⁷ On-road and nonroad mobile source emissions were calculated using the EPA's MOVES2014a model⁸ combined with local activity inputs including vehicle miles traveled (VMT) and average speed data, as well as local fleet, age distribution, and fuels information. Area sources include many categories of emissions. The EPA finds that these sources were adequately accounted for in the revised 2011 base year EI. The methodology used to calculate emissions for each respective category followed relevant EPA EI guidance⁹ and was sufficiently documented in the TCEQ submittal.¹⁰ We are proposing to approve the revised 2011 base year EI. Table 1 summarizes the revised EI for the DFW area. See our TSD for more detail.

⁷ States are not obligated to include malfunction emissions in the base year inventory for RFP plans. See the discussion beginning on page 83 of Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations EPA-454/B-17-003, available at https://www.epa.gov/sites/production/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf (hereinafter referred to as "EPA's EI Guidance") (July 2017).

⁸ EPA's Motor Vehicle Emission Simulator (MOVES) is a state-of-the-science emission modeling system that estimates emissions for mobile sources at the national, county, and project level for criteria air pollutants, greenhouse gases, and air toxics. See <https://www.epa.gov/moves>.

⁹ In addition to EPA's EI Guidance, see MOVES2014 and MOVES2014a Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity, EPA-420-B-15-093, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100NN9L.PDF?Dockey=P100NN9L.pdf> (Nov. 2015).

¹⁰ See our TSD and the TCEQ submittal with appendices in the docket for this rulemaking.

TABLE 1—PREVIOUSLY APPROVED (81 FR 88124), AND UPDATED RFP BASE YEAR EIS FOR THE DFW AREA 2011 BASE YEAR INVENTORY, REPORTED IN TONS PER DAY [tpd]

Source type	NO _x				VOC			
	Approved at 81 FR 88124		TCEQ submittal		Approved at 81 FR 88124		TCEQ submittal	
	9 Counties	Wise	9 Counties	Wise	9 Counties	Wise	9 Counties	Wise
Point	31.34	8.61	31.34	8.61	27.66	2.14	27.54	2.35
Area	37.69	13.29	37.69	13.29	262.36	28.95	262.35	28.95
Non-road Mobile	110.26	6.69	86.08	5.96	53.38	1.25	40.28	1.21
On-road Mobile	235.23	5.90	231.83	7.24	102.39	1.73	100.19	2.05
Subtotal	414.52	34.49	386.94	35.10	445.79	34.07	430.36	34.56
Total	449.01		422.04		479.86		464.92	

B. Reasonable Further Progress Demonstration

To calculate the required RFP emission reductions, CAA section 182

and 40 CFR 51.1110(b) require that the percent reduction be calculated from the base year EI. The required reductions are then subtracted from the 2011 base

year EI to provide the RFP emissions target numbers. See our TSD and the TCEQ submittal for more detail. The RFP calculations are shown in Table 2.

TABLE 2—CALCULATION OF RFP TARGET EMISSION REDUCTIONS THROUGH 2020 [tpd]

Description	NO _x	VOC
a. 2011 Emissions Inventory for Wise County (from Table 1)	35.10	34.56
b. Percent of VOC to meet 15% reduction for Wise County		15
c. 2011 Emissions Inventory for the 9 Counties (from Table 1)	386.94	430.36
d. Percent of NO _x and VOC to meet 15% reduction for the 9 Counties (percentages must total 15)	14	1
e. Total Emissions Inventory for all 10 Counties (from Table 1)	422.04	464.92
f. Percent of NO _x and VOC to meet 9% reduction	8	1
g. 15% NO _x and VOC reduction, 2011–2017, for Wise County (row a multiplied by row b) (34.56 × 0.15 = 5.18)		5.18
h. 15% NO _x and VOC reduction, 2011–2017, for the 9 Counties (row c multiplied by row d) (386.94 × 0.14 = 54.17) and (430.36 × 0.01 = 4.30)	54.17	4.30
i. 9% NO _x and VOC reduction, 2018–2020 (row e multiplied by row f) (422.04 × 0.08 = 33.76) and (464.92 × 0.01 = 4.65)	33.76	4.65
j. Total emissions reductions for 2011–2020 (add rows g, h, and i)	87.93	14.13
k. 2020 Target Level of Emissions (row e minus row j)	334.11	450.79

To determine whether the area is able to meet the RFP target, the State must establish the future year (2020) EI and subtract any control measures that will be applied to sources in the DFW area.

Section 182(b)(1)(A) of the Act requires that states provide sufficient control measures in their RFP plans to offset growth in emissions. The controls identified by the State to achieve RFP

are listed in Table 3. For more detail on these controls, see our TSD and the TCEQ submittal.

TABLE 3—DFW AREA CONTROL MEASURES AND PROJECTED EMISSION REDUCTIONS, 2011–2020 [tpd]

Control strategy description	NO _x	VOC
Federal Motor Vehicle Control Program (FMVCP)	796.66	290.23
Reformulated Gasoline (RFG)/East Texas Regional use of gasoline with low Reid Vapor Pressure (RVP)/Low Sulfur Gasoline/Ultra Low Sulfur Diesel (ULSD)	54.23	15.17
Inspection and Maintenance (I/M) ¹¹	6.87	8.14
On-road Texas Low Emission Diesel (TxLED)	2.65	0.00
Tier I and II locomotive NO _x standards	19.15	0.74
Small non-road Spark Ignition (SI) engines (Phase I) ¹²	-3.88	33.19
Heavy duty non-road engines	37.44	14.79
Tiers 2 and 3 non-road diesel engines	38.06	3.15
Small non-road SI engines (Phase II)	2.71	32.19
Large non-road SI and recreational marine	36.77	16.48
Non-road TxLED	3.89	0.00
Non-road RFG	0.01	0.49
Tier 4 non-road diesel engines	25.93	1.14

¹¹ I/M is not implemented in Wise County—see 82 FR 27122 (June 14, 2017).

¹² The increase in NO_x emissions is due to the engine modifications required to meet the VOC and CO standards of the Small SI Phase 1.

TABLE 3—DFW AREA CONTROL MEASURES AND PROJECTED EMISSION REDUCTIONS, 2011–2020—Continued
[tpd]

Control strategy description	NO _x	VOC
Small SI (Phase III)	2.47	16.99
Drilling rigs: Federal engine standards and TxLED	0.31	0.11
Total Projected Emission Reductions	1,023.27	432.81

To determine whether the area will meet the RFP targets, we subtract the projected emission reductions (Table 3) from the projected EI of uncontrolled emissions for 2020. The projected EI will reflect emissions resulting from anticipated changes in activity from 2011 to 2020, such as emissions increases due to growth in population and VMT. The projected EI was also

adjusted to account for available (unused) emissions credits—to account for the possible use of banked emissions, all banked emissions reduction credit (ERC) and discrete emissions reduction credit (DERC) data were also used to forecast growth.¹³ The methodology used to forecast the 2020 emissions for each respective category followed relevant EPA EI guidance and

was sufficiently documented in the TCEQ submittal. The projected EI data in Table 4 are labeled as “uncontrolled” emissions. To achieve RFP, the amount of emissions remaining after subtracting the emissions reductions from the control measures must be equal to or less than the target inventories calculated in Table 2.

TABLE 4—SUMMARY OF RFP DEMONSTRATION FOR THE DFW AREA THROUGH 2020
[tpd]

Description	NO _x	VOC
a. 2020 Uncontrolled emissions	1,307.93	855.96
b. Projected emissions reductions through 2020 (from Table 3)	1,023.27	432.81
c. Projected Emissions after Reductions (subtract line b from line a)	284.66	423.15
d. 3% reductions reserved for prior (2017–2018) RFP milestone contingency measures	8.44	4.65
e. Projected emissions, including prior contingency requirement (add lines c and d)	293.10	427.80
f. 2020 Target (from Table 3 above, line k)	334.11	450.79
If the projected emissions (line e) are less than the RFP target (line f), the area demonstrates RFP. Is line e less than line f?	Yes	Yes
g. Subtract line e from line f for surplus	41.01	22.99

In Table 4, we see that the projected emissions in row e, after accounting for reductions from controls and the 2017–2018 contingency measures, are less than the 2020 RFP target emissions and thus, demonstrate RFP. We are proposing that the emissions reductions projected for 2020 are sufficient to meet the 2020 RFP targets.

C. Contingency Measures

As noted earlier, RFP plans for moderate and above nonattainment areas must include contingency measures, which, consistent with CAA section 172(c)(9), “shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part.” EPA has long interpreted the contingency measures provision to allow states to rely on measures already in place and

implemented so long as those reductions are beyond those relied on for purposes of the attainment or RFP planning SIP.¹⁴ In addition, the April 16, 1992 General Preamble provided the following guidance: “States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure” (57 FR 13512, April 16, 1992).

While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA interprets the CAA to mean that implementation of these contingency measures would provide additional emissions reductions of up to 3 percent of the adjusted base year inventory (or a lesser percentage that will make up

the identified shortfall) in the year following the missed milestone, whether it be RFP or attainment.¹⁵

The TCEQ submittal provides NO_x and VOC emission reductions to meet the requirement for contingency measures for the DFW area. These contingency measure reductions are not otherwise relied upon for RFP or for attainment. The TCEQ submittal includes but is not limited to surplus emissions reductions from the 2020 RFP demonstration (see Table 4, line g) for the DFW area contingency measure demonstration. The TCEQ submittal also includes emission reductions that will take place during calendar year 2021 for the DFW area contingency measure demonstration—these contingency measures consist of State mobile source measures that are already approved in the SIP (I/M, RFG, and TxLED)¹⁶ and federal measures (FMVCP and ULSD). Thus, the contingency measures for 2021 are

¹³ Emissions credits are banked emissions reductions that may return to the air shed in the future when these emissions credits are used either to modify existing facilities, construct new facilities, or demonstrate compliance with source-specific emissions limit obligations where provided

for in Texas SIP rules. For more detail, see the TSD and the TCEQ submittal.

¹⁴ This interpretation has been upheld by the Fifth Circuit Court of Appeals (and the State of Texas is within the Fifth Circuit jurisdiction). See *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004).

¹⁵ See the April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

¹⁶ As noted earlier in this rulemaking, the I/M program was approved into the SIP in 2001 (66 FR 57261). See footnotes 14 and 15 regarding approval of RFG and TxLED in the SIP.

reliable, permanent, and enforceable. The contingency measures are listed in Table 5.

TABLE 5—DEMONSTRATION OF THE DFW AREA RFP CONTINGENCY MEASURES [tpd]

Description	NO _x	VOC
a. 2011 Base year emissions (from Table 1)	422.04	464.92
b. Percent of NO _x and VOC to meet contingency measure requirement (percentage must total 3)	2	1
c. 3% NO _x reduction for 2021 (row a multiplied by row b) (422.04 × 0.02 = 8.44, and 464.92 × 0.01 = 4.65)	8.44	4.65
Excess reductions to meet contingency requirement		
d. Surplus RFP reductions (from Table 4)	41.01	22.99
e. Subtract 2020 RFP MVEB safety margin	−9.76	−5.68
f. 2020 to 2021 emission reductions (FMVCP, I/M, RFG, East Texas Regional low RVP, 2017 low sulfur gasoline standard on-road TxLED, and ULSD)	24.69	9.12
g. 2020 to 2021 emission reductions (federal non-road mobile new vehicle certification standards, non-road RFG, and non-road TxLED)	2.75	2.48
h. Total projected emissions reductions, accounting for MVEB safety margin (add lines d, e, f, and g)	58.69	28.91
If the projected reductions (line h) are greater or equal to the reductions needed to meet the contingency requirement (line c), then the contingency requirement is met. Is line h greater than line c?	Yes	Yes
Subtract line c from line h for surplus	50.25	24.26

In Table 5, we see that the contingency measures provided for the DFW area, after accounting for the MVEB safety margin, are more than sufficient to meet the 3 percent contingency requirement. Indeed, if the DFW area relied only on the contingency measures scheduled for implementation during 2021 (Table 5, lines f and g), after accounting for the MVEB safety margin, those contingency measures alone would be adequate to meet the 3 percent contingency requirement. In addition, the contingency measures that occur from 2020 to 2021 are State and Federal measures that are already approved into the Texas SIP and as such are expected to be implemented with no further action by the State and with no additional rulemaking actions. Our evaluation of these contingency measures finds that the full implementation of such measures within 60 days after EPA notifies the State of its failure is achievable because the contingency measures that occur from 2020 to 2021 are State and Federal measures already approved into the Texas SIP and as such are expected to be implemented with no further action by the State. We are proposing to approve the contingency measures for the DFW area.

D. Motor Vehicle Emission Budgets

The MVEB is the mechanism to determine if future transportation plans conform to the SIP. Transportation conformity is required by CAA section 176(c) and mandates that future transportation plans must not produce new air quality violations, worsen existing violations, delay RFP

milestones, or delay timely attainment of the NAAQS. Thus, pursuant to CAA section 176(c), the RFP plan must include MVEBs for transportation conformity purposes. The MVEB is the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The DFW RFP SIP contains VOC and NO_x MVEBs for RFP milestone year 2020 (see Table 6). On-road emissions must be shown in future transportation plans to be less than the MVEBs for 2020 and subsequent years.

EPA is evaluating the adequacy of the submitted MVEBs in parallel to this proposed approval action. Once EPA finds the submitted MVEBs are adequate for transportation conformity purposes, those MVEBs must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA’s criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy is described in our TSD.

EPA intends to make its determination on the adequacy of the 2020 RFP MVEBs for the DFW area for transportation conformity purposes soon, by completing the adequacy process that was started on June 3, 2020.¹⁷ After EPA finds the 2020 MVEBs adequate or approves them, the

¹⁷ On June 3, 2020, EPA posted the DFW area NO_x and VOC MVEBs on EPA’s website for the purpose of soliciting public comments, as part of the adequacy process. The comment period closed on July 3, 2020, and we received no comments. For more information, visit <https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa#dallas-fort-worth-rea>.

new MVEBs for NO_x and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years 2020 and beyond, the applicable budgets will be the new 2020 MVEBs. We are proposing to approve the 2020 MVEBs for the DFW area.

TABLE 6—RFP MOTOR VEHICLE EMISSIONS BUDGETS FOR DFW [tpd]

Year	NO _x	VOC
2020	107.25	62.41

III. Proposed Action

We are proposing to approve revisions to the Texas SIP that address the RFP requirements for the DFW serious ozone nonattainment area for the 2008 ozone NAAQS. Specifically, we are proposing to approve the RFP demonstration and associated MVEBs, contingency measures for RFP or failure-to-attain, and the revised 2011 base year EI for the DFW area. Further, as part of today’s action, EPA is describing the status of its adequacy determination for the NO_x and VOC MVEBs for 2020 in accordance with 40 CFR 93.118(f)(2). Within 24 months from the effective date of EPA’s adequacy determination for the MVEBs or the publication date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_x and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

IV. Statutory and Executive Order Reviews

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 30, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020-21986 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2019-0611; FRL-10013-86-OAR]

RIN 2060-AU54

Implementation of the Revoked 1997 8-Hour Ozone National Ambient Air Quality Standards; Updates for Areas that Attained by the Attainment Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing updates to the Code of Federal Regulations (CFR) to codify its findings that nine areas in four states attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (herein referred to as the 1997 ozone NAAQS) by the applicable attainment dates. The parallel direct final rule is published in the "Rules and Regulations" section of this issue of the **Federal Register** because the Agency views this as a noncontroversial action. If no significant adverse comments are received on the direct final rule, then no further action will be taken on this proposal and the direct final rule will become effective as provided in that action.

DATES: *Comments:* Comments must be received on or before November 9, 2020. If the EPA receives significant comment on the proposed rule, the EPA will respond in writing to comments and include the written responses in any subsequent final rule based on the proposed rule. *Public Hearing:* If anyone contacts us requesting to speak at a public hearing by October 14, 2020, we will hold a public hearing. Additional

information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at <https://www.epa.gov/stationary-engines/newsroom-performance-standardsstationary-compression-ignitioninternal-0>. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2019-0611, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/comments.html>. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Raps, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C539-01, Research Triangle Park, NC 27711; telephone number (919) 541-4383; email address: raps.virginia@epa.gov.

To request a public hearing, contact Ms. Pam Long, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504-01), Research Triangle Park, NC 27711; telephone number (919) 541-0641; email address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

I.

A. Does this action apply to me?

Entities potentially affected directly by this proposed action include the public seeking information on the air quality status of the subject areas, and State air agencies for which areas are found to attain by the attainment date.

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

When submitting comments, remember to:

- Identify the rulemaking docket by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions. The proposed rule may ask you to respond to a specific question or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible and suggest alternatives.
- Explain your views as clearly as possible avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. How can I find information about a possible hearing?

To request a public hearing or information pertaining to a public hearing regarding this document, contact Ms. Pam Long, OAQPS, U.S. EPA, at (919) 541-0641 or long.pam@epa.gov on or before October 14, 2020. Additional information about the hearing, if one is requested, will be published in a subsequent **Federal Register** document.

II. Direct Final Rule

Updates to 40 CFR part 52 are proposed by this notice exactly as given

in the direct final rule, which is published in the Rules and Regulations section of this issue of the **Federal Register**. The EPA has published the updates to part 52 as a direct final action because the EPA views the updates as noncontroversial and anticipates no significant adverse comments. The EPA has explained its reasons for these updates in the direct final rule. If no significant adverse comments are received, no further action will be taken on this proposal, and the direct final rule will become effective as provided in that action.

If the EPA receives relevant adverse comments on the direct final rule, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**. If the direct final rule in the Rules and Regulations section of this issue of the **Federal Register** is withdrawn, all comments received on this proposal will be addressed in a subsequent final rule. In such case, the EPA does not intend to institute a second comment period on the subsequent final action. Any parties interested in commenting should do so at this time. For details of the rationale for the proposal and the regulatory revisions, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Statutory and Executive Order Reviews

For a complete discussion of the administrative requirements applicable to this proposed action, see the direct final rule in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects In 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

Andrew Wheeler,
Administrator.

[FR Doc. 2020-19560 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

43 CFR Part 17

Bureau of Indian Education: National Policy Memorandum on Section 504 of the Rehabilitation Act of 1973 (NPM-EDUC-33)

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notification of Tribal consultation.

SUMMARY: This document announces that the Bureau of Indian Education (BIE) will be conducting consultation meetings by webinar to obtain oral and written comments on the BIE National Policy Memorandum (NPM-EDUC-33), which is an interim policy, applicable to BIE-operated elementary and secondary schools and dormitories, on the nondiscrimination prohibitions based on disability found in Section 504 of the Rehabilitation Act of 1973, as amended, and the Department's implementing regulations. The Department will use comments received during consultation to inform its development of a final Section 504 policy for BIE-operated elementary and secondary schools and dormitories.

DATES: Written comments must be received on or before November 27, 2020, 11:59 p.m. EST. See **SUPPLEMENTARY INFORMATION** section for scheduled dates and links to register for each webinar meeting.

ADDRESSES: Mail or hand-deliver written comments to Tracie Atkins, Bureau of Indian Education, 1001 Indian School Road, Albuquerque, NM 87104. Submissions by facsimile should be sent to (505) 563-3043. Written comments can also be emailed to tracie.atkins@bie.edu.

FOR FURTHER INFORMATION CONTACT: Tracie Atkins, BIE 504 Program Coordinator, (202) 893-3553 or tracie.atkins@bie.edu.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian Tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on the BIE National Policy Memorandum (NPM-EDUC-33), which is an interim policy, applicable to BIE-operated elementary and secondary schools and dormitories, on the nondiscrimination prohibitions based on disability found in Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504) and the Department's implementing regulations

at 43 CFR 17.501–17.570 (Subpart E). NPM–EDUC–33 explains how

BIE-operated schools will implement the Subpart E regulations and outlines ways in which BIE will be able to identify, assess, and provide eligible students with disabilities appropriate educational services within the meaning of Section 504.

The Department will use comments received during consultation to inform its development of a final Section 504

policy for BIE-operated elementary and secondary schools and dormitories. The proposed consultation topics are: (1) Qualifying for Section 504 protections, (2) Program Accessibility, (3) Identification of Students with Disabilities, (4) Development and contents of a Section 504 Individualized Accommodation Plan (IAP), (5) Section 504 and Discipline: Manifestation Determination, (6) and Compliance Procedures: Filing a complaint.

BIE will conduct two consultation sessions through telephonic webinar with a Tribal representative or their designee, and school boards, parents, teachers, and other public stakeholders. The following table lists dates and consultation teleconference webinar registration information. After registering, you will receive a confirmation email containing information about joining the meeting.

For	Dates	Time (EDT)	To register for webinar
Tribes	November 9 and 10, 2020	4 p.m.–5 p.m.	Register in advance for this meeting: https://us02web.zoom.us/join/register/tZcvc-6vrjwpHdOA4NqtOhjmn4Wrcp9L8swF .
Public	November 9 and 10, 2020	5 p.m.–6 p.m.	Register in advance for this meeting: https://us02web.zoom.us/join/register/tZcvc-6vrjwpHdOA4NqtOhjmn4Wrcp9L8swF .

The Tribal consultation presentation and a copy of NPM–EDUC 33 can be found at https://www.bia.gov/sites/bia.gov/files/assets/public/raca/national_policy_memoranda/pdf/NPM-EDUC-33_Section-504_FINAL_Signed_IssueDate_508.pdf.

The BIE strongly recommends reviewing the NPM prior to attending a consultation session or submitting written comments in order to provide meaningful feedback.

Public Comment Availability

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address listed under the **ADDRESSES** section during regular business hours (8 a.m. to 4:30 p.m. EST), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Authority

This document is published in accordance with the authority delegated by the Secretary of the Interior to the

Assistant Secretary—Indian Affairs by 209 DM 8.1.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–21972 Filed 10–8–20; 8:45 am]

BILLING CODE 4337–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 20–140; FRS 17118]

Exemptions Implemented Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes measures to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) and seeks comment on how to best implement it. As directed by the TRACED Act, the Commission seeks to ensure that any exemption the Commission has granted under the Telephone Consumer Protection Act (TCPA) for calls to residential lines or for calls to wireless numbers includes requirements with respect to the classes of parties that may make such calls; the classes of parties that may be called; and the number of such calls that may be made to a particular called party. The Commission also seeks comment on any conditions that are necessary to ensure that the existing exemptions for calls made to residential telephone lines satisfy section 8 of the TRACED Act and

proposes to allow residential consumers to opt out of any calls made pursuant to an exemption.

DATES: Comments are due on or before October 26, 2020, and reply comments are due on or before November 3, 2020.

ADDRESSES: You may submit comments, identified by CG Docket No. 02–278, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** 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.

- 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.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public

Notice, DA 20–304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

FOR FURTHER INFORMATION CONTACT:

Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338–2797 or Richard.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s notice of proposed rulemaking (*NPRM*), in CG Docket No. 02–278, FCC 20–140, adopted and released on October 1, 2020. The full text of document is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS). 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 and Governmental Affairs Bureau at 202–418–0530 (voice).

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission’s rules, 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. In this notice of proposed rulemaking (*NPRM*), the Commission, to

comply with the TRACED Act, seeks comment on the need to amend exemptions the Commission has previously carved out. Those exemptions are: (1) Non-commercial calls to a residence; (2) commercial calls to a residence that do not constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; (4) Health Insurance Portability and Accountability Act of 1996 (HIPAA)-related calls to a residence; (5) package delivery-related calls to a wireless number; (6) financial institution calls to a wireless number; (7) healthcare-related calls to a wireless number; (8) inmate calling service calls to a wireless number; and (9) cellular carrier calls to their own subscribers. The Commission seeks comment on these and any other issues that may allow it to implement section 8 of the TRACED Act. The Commission proposes to codify in the Commission’s rules all existing exemptions under 47 U.S.C. 227(b)(2)(C).

A. Non-Commercial Calls to a Residential Line

2. The Commission has exempted calls “not made for a commercial purpose” from the prohibition on artificial or prerecorded-voice messages to residential telephone lines. See 47 CFR 64.1200(a)(3)(ii). The Commission seeks comment on how to amend this rule as needed. Because this exemption is predicated on calls not being made for a commercial purpose, the Commission proposes to deem these classes of parties as “informational callers” that do not have a commercial purpose. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8’s directive to adopt requirements with respect to the number of calls that may be made to a particular party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

3. The Commission seeks comment on the potential burdens that these opt-out requirements could impose on those

entities that make calls under this exemption, including ways to minimize any such burdens. How long would it take to implement the requirements in § 64.1200(d) of the Commission’s rules for those calls made pursuant to an exemption under 47 U.S.C. 227(b)(2)(B)? Would the time necessary for entities to honor opt-out requests vary according to the size of the calling entity? Are there ways to mitigate any such burdens on smaller entities? The Commission also seeks comment on the extent to which entities that make such artificial or prerecorded-voice calls for a non-commercial purpose may already offer, on a voluntary basis, an opt-out mechanism for those subscribers who request that they no longer be called.

B. Commercial Calls to a Residential Line That Do Not Constitute Telemarketing

4. The Commission has exempted calls made for a commercial purpose but that do not include or introduce an advertisement or constitute telemarketing from the prohibition on using an artificial or prerecorded-voice message to residential telephone lines. See 47 CFR 64.1200(a)(3)(iii). The Commission seeks comment on how to amend this rule as needed. Because this exemption is predicated on calls not including an advertisement or constituting telemarketing, the Commission proposes to deem these classes of parties as “informational callers” to the extent they are only providing information or “transactional callers” that are calling to complete or confirm a commercial transaction with the called party. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

C. Tax-Exempt Nonprofit Organization Calls to a Residential Line

5. The Commission has exempted calls made by or on behalf of a tax-exempt nonprofit organization from the prohibition on using an artificial or prerecorded voice to deliver a message to a residential telephone line. *See* 47 CFR 64.1200(a)(3)(iv). The Commission seeks comment on how to amend this rule as needed. To implement section 8's directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

D. HIPAA Calls to a Residential Line

6. The Commission has exempted HIPAA-related calls that deliver a healthcare message from the prohibition on using an artificial or prerecorded voice to deliver a message to residential telephone lines. *See* 47 CFR 64.1200(a)(3)(v). The Commission seeks comment on how to amend this rule as needed. To implement section 8's directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

E. Package Delivery Calls to a Wireless Number

7. The Commission has exempted package delivery calls to wireless consumers subject to several conditions. *See Cargo Airline Association Petition for Expedited Declaratory Ruling*, CG

Docket No. 02–278, Order, published at 80 FR 15688, March 25, 2015. These conditions appear to satisfy section 8 of the TRACED Act. Among other things, these conditions limit the class of calling parties (package delivery companies), the class of called parties (package recipients), and the number of calls (one notification for each package, with one additional notification for up to two follow-up attempts to obtain a recipient's signature if a signature is needed for delivery). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

F. Financial Institution Calls to a Wireless Number

8. The Commission has exempted calls made by financial institutions subject to certain conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, WC Docket No. 07–135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. The exemption's conditions include limitations on the class of calling parties (financial institutions), the class of called parties (customers of the financial institution), and the number of calls (no more than three calls per event over a three-day period for each affected account). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

G. Healthcare Provider Calls to a Wireless Number

9. The Commission has exempted healthcare provider calls subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, WC Docket No. 07–135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (by or on behalf of a "covered entity" or its "business associate" as defined by HIPAA), the class of called parties (patients), and the number of calls (one message/call per day, up to a maximum of three voice calls or text messages combined per

week). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

H. Inmate Calling Service Calls to a Wireless Number

10. The Commission has exempted calls from inmate phone service providers subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, WC Docket No. 07–135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (inmate collect call service providers), the class of called parties (wireless subscribers with whom the service provider needs to establish a billing arrangement for future inmate collect calls), and the number of calls (no more than three notifications following an unsuccessful collect call). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

I. Cellular Carrier Calls to Subscribers

11. In 1992, the Commission concluded that cellular carriers need not obtain additional consent from their subscribers prior to initiating autodialed or artificial or prerecorded-voice calls for which the cellular subscriber is not charged because such calls are not prohibited by 47 U.S.C. 227(b)(1)(A)(iii). This ruling limited the class of calling parties (cellular carrier) and the class of called parties (the cellular carrier's own subscriber), but it does not appear to limit the number of calls a calling party may make to a called party beyond not charging the subscriber for the call. The Commission seeks comment on how to amend this exemption as needed. To implement section 8's directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission

adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month?

Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the 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 *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided.

A. Need for, and Objectives of, the Proposed Rules

13. The TRACED Act directs the Commission, no later than December 30, 2020, to “prescribe such regulations or amend such existing regulations, as necessary to ensure that [any] such exemption [issued under 47 U.S.C. 227(b)(2)(B) or (C) of the TCPA] contains each requirement [listed in section 8(a) of the TRACED Act].” Section 8(b) of the TRACED Act provides that “[t]o the extent such an exemption contains such a requirement before such date of enactment, nothing in this section or the amendments made by this section shall be construed to require the Commission to prescribe or amend regulations relating to such requirement.”

14. The *NPRM* seeks comment on whether to amend the exemptions the Commission has previously carved out to comply with the TRACED Act. Those exemptions are: (1) Non-commercial calls to a residence; (2) commercial calls to a residence that do not constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; (4) HIPAA-related calls to a residence; (5) package delivery-related calls to a wireless number; (6) financial institution calls to a wireless number; (7) healthcare-related calls to a wireless number; (8) inmate calling service calls to a wireless number; and (9) cellular carrier calls to their own subscribers. The *NPRM* seeks comment on these and any other issues that may allow the Commission to implement section 8 of the TRACED Act and the TCPA’s objective in balancing individual privacy rights with legitimate communications and on ways to minimize any compliance burdens for both small and large entities that make

calls pursuant to one of the exemptions in the law. The *NPRM* proposes to codify all existing exemptions granted under 47 U.S.C. 227(b)(2)(C).

B. Legal Basis

15. The proposed rules are authorized under sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, and section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Public Law 116–105, 133 Stat. 3274.

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

16. The *NPRM* generally does not propose specific limits on any existing exemptions in the rules and thus contains no specific reporting or recordkeeping requirements. The *NPRM* does, however, seek comment on requiring entities making artificial or prerecorded-voice calls to residential numbers pursuant to any of the exemptions adopted under 47 U.S.C. 227(b)(2)(B) to allow consumers to opt out of any future calls. In such cases, a caller may need to record and track such opt-out requests in order to avoid making any additional calls to certain consumers. In such cases, a caller may need to record and track such opt-out requests in order to avoid making any additional calls to certain consumers.

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

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

18. The *NPRM* specifically seeks comment on the timing necessary for entities that currently take advantage of exemptions from the TCPA to implement any new limitations the Commission might adopt on such exemptions. The *NPRM* considers, for example, different timing schedules for small and large entities subject to the TCPA rules. Specifically, the *NPRM* asks about the time necessary for

entities to honor opt-out requests and whether that will vary according to the size of the entity. Finally, the *NPRM* seeks comment on different options available to entities to ensure they are complying with consumers’ desire not to be contacted. It asks whether a caller should simply be permitted to provide a telephone number for opting out or whether the caller should provide an automated voice-response mechanism during the call for doing so. The *NPRM* considers any compliance costs for small businesses if the proposed rules are adopted.

19. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

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

20. None.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.1200 by revising paragraph (a)(1)(iv), adding paragraph (a)(9), and revising paragraphs (b)(2) and (3) and (d) to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(1) * * *

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the

number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when making calls exempted by paragraph (a)(9) of this section.

* * * * *

(9) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section for making any call exempted in this paragraph (a)(9), provided that the call is not charged to the called person or counted against the called person's plan limits on minutes or texts. As used in this paragraph (a)(9), the term "call" includes a text message, including a short message service (SMS) call.

(i) Calls made by a package delivery company to notify a consumer about a package delivery, provided that all of the following conditions are met:

(A) The notification must be sent only to the telephone number for the package recipient;

(B) The notification must identify the name of the package delivery company and include contact information for the package delivery company;

(C) The notification must not include any telemarketing, solicitation, or advertising content;

(D) The voice call or text message notification must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) The package delivery company shall send only one notification (whether by voice call or text message) per package, except that one additional notification may be sent for each attempt to deliver the package, up to two attempts, if the recipient's signature is required for the package and the recipient was not available to sign for the package on the previous delivery attempt;

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request within a reasonable time from the date such request is made, not to exceed thirty days; and,

(G) Each notification must include information on how to opt out of future delivery notifications; voice call notifications that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the

call; voice call notifications that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future package delivery notifications; text notifications must include the ability for the recipient to opt out by replying "STOP."

(ii) Calls made by an inmate collect call service provider following an unsuccessful collect call to establish a billing arrangement with the called party to enable future collect calls, provided that all of the following conditions are met:

(A) Notifications must identify the name of the inmate collect call service provider and include contact information;

(B) Notifications must not include any telemarketing, solicitation, debt collection, or advertising content;

(C) Notifications must be clear and concise, generally one minute or less;

(D) Inmate collect call service providers shall send no more than three notifications following each inmate collect call that is unsuccessful due to the lack of an established billing arrangement, and shall not retain the called party's number after call completion or, in the alternative, after the third notification attempt; and

(E) Each notification call must include information on how to opt out of future calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future notification calls; and,

(F) The inmate collect call service provider must honor opt-out requests immediately.

(iii) Calls made by any financial institution as defined in section 4(k) of the Bank Holding Company Act of 1956, 15 U.S.C. 6809(3)(A), provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the customer of the financial institution;

(B) Voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: Transactions and events that suggest a risk of fraud or identity theft; possible breaches of the security of customers' personal information; steps

consumers can take to prevent or remedy harm caused by data security breaches; and actions needed to arrange for receipt of pending money transfers;

(D) Voice calls and text messages must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) or 160 characters or less in length for text messages;

(F) A financial institution may initiate no more than three messages (whether by voice call or text message) per event over a three-day period for an affected account;

(G) A financial institution must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A financial institution must honor opt-out requests immediately.

(iv) Calls made by healthcare providers, which include hospitals, emergency care centers, medical physician or service offices, poison control centers, and other healthcare professionals, provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the patient;

(B) Voice calls and text messages must state the name and contact information of the healthcare provider (for voice calls, these disclosures would need to be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: Appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions;

(D) Voice calls and text messages must not include any telemarketing,

solicitation, or advertising; may not include accounting, billing, debt-collection, or other financial content; and must comply with HIPAA privacy rules, 45 CFR 160.103;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(F) A healthcare provider may initiate only one message (whether by voice call or text message) per day to each patient, up to a maximum of three voice calls or text messages combined per week to each patient;

(G) A healthcare provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A healthcare provider must honor opt-out requests immediately.

(b) * * *

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours; and

(3) In every case where the artificial or prerecorded-voice telephone message is made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call

request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the caller's do-not-call list.

* * * * *

(d) No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel.* Personnel engaged in making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or who are engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on

whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

(4) *Identification of callers and telemarketers.* A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for 5 years from the time the request is made.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

[Docket No. FWS-HQ-MB-2020-0032; FF09M21200-201-FXMB1231099BPP0]

RIN 1018-BE34

Migratory Bird Hunting; Proposed 2021–22 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notification of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2021–22 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, describes the proposed regulatory alternatives for the 2021–22 general duck seasons and preliminary proposals that vary from the 2020–21 hunting season regulations, and requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* You may comment on the general duck season regulatory alternatives and other preliminary proposals for the 2021–22 season until November 9, 2020. Tribes must submit proposals and related comments on or before December 1, 2020. See Schedule of Biological Information Availability, Regulations Meetings and **Federal Register** Publications for the 2021–22 Hunting Season at the end of this proposed rule for further information.

Meetings: The SRC will meet on October 20–21, 2020, to consider and develop proposed regulations for the 2021–22 migratory game bird hunting seasons. Meetings on both days will commence at approximately 11:00 a.m. (Eastern) and are open to the public.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-MB-2020-0032.

- *U.S. mail:* Public Comments Processing, Attn: FWS-HQ-MB-2020-0032; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See Public Comments, below, for more information.

Meetings: The October 20–21, 2020, SRC meeting will be conducted telephonically with or without the aid of video technology. The meeting is open to the public. Meeting details and opportunities for the public to listen to and observe the meeting will be posted at <https://www.fws.gov/birds> when they become available.

Accommodation requests: The Service is committed to providing access to the SRC meeting for all participants and observers. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on October 1, 2020. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Process for Establishing Annual Migratory Game Bird Hunting Regulations

As part of the Department of the Interior’s 2015 retrospective regulatory review, we changed our process for developing migratory game bird hunting regulations with the goal of enabling the State agencies to select and publish their season dates earlier than was allowed under the prior process. We provided a detailed overview of this process in the August 6, 2015, **Federal Register** (80 FR 47388). This proposed rule is the first in a series of proposed and final rules that establish regulations for the 2021–22 migratory bird hunting season.

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg” of migratory game birds can take place, and to adopt regulations for this purpose (16 U.S.C. 704(a)). These regulations are written after giving due regard to “the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds” (16 U.S.C. 704(a)), and are updated annually. This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of Federal, State, and tribal governments.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the general public.

The process for adopting migratory game bird hunting regulations (50 CFR part 20) is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

Service Migratory Bird Regulations Committee Meetings

The SRC conducted an open meeting on April 28, 2020, to discuss preliminary issues for the 2021–22 regulations, and will conduct another meeting on October 14–15, 2020, to review information on the current status of migratory game birds and develop 2021–22 migratory game bird regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about these meetings.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2021–22 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20. For the 2021–22 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae

(rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2021–22 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We annually publish definitions of flyways and management units, and a description of the data used in and the factors affecting the regulatory process in proposed and final rules later in the regulations development process (see March 19, 2020, **Federal Register**, 85 FR 15870, for the latest definitions and descriptions).

Regulatory Schedule for 2021–22

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2021–22 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates. All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
 - A. General Harvest Strategy
 - B. Regulatory Alternatives
 - C. Zones and Split Seasons
 - D. Special Seasons/Species Management
 - i. September Teal Seasons
 - ii. September Teal/Wood Duck Seasons
 - iii. Black Ducks
 - iv. Canvasbacks
 - v. Pintails
 - vi. Scaup
 - vii. Mottled Ducks
 - viii. Wood Ducks
 - ix. Youth and Veterans–Active Military Personnel Hunting Days
 - x. Mallard Management Units
 - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
 - A. Special Early Seasons
 - B. Regular Seasons
 - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves

17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

This and subsequent documents will refer only to numbered items requiring attention. We will omit those items not requiring attention, and remaining numbered items may be discontinuous and appear incomplete.

The proposed regulatory alternatives for the 2021–22 duck hunting seasons are contained at the end of this document. We plan to publish final regulatory alternatives for duck seasons about mid-September 2020, proposed season frameworks about mid-December 2020, and final season frameworks about late February 2021.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2021–22 general duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2020–21 regulations and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2021–22 season. We seek additional information and comments on this proposed rule.

Consolidation of Rulemaking Documents

For administrative purposes, this document consolidates the notice of our intent to establish open migratory game bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact:

Tina Chouinard, U.S. Fish and Wildlife Service, 606 Browns Church Road, Jackson, TN 38305; 731–432–0981; tina_chouinard@fws.gov.

Requests for Tribal Proposals Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response

to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates, season length, and daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds, as amended by the Protocol Between the Government of Canada and the Government of the United States of America Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States. The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife-management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we

will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We are supportive of this harvest provided it does not take place during the closed season required by the Convention and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members. These guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2021–22 migratory game bird hunting season should submit a proposal that includes: (1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations; (2) harvest anticipated under the proposed regulations; and (3) tribal capabilities to enforce migratory game bird hunting regulations. For those situations where limited capabilities to enforce regulations could result in harvest levels that significantly impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential measures to limit harvest level.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag limit, possession limit, and season length for migratory game birds that Federal regulations are likely to permit for the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2021–22 hunting season should submit their proposals no later than December 1, 2020. Tribes should direct inquiries regarding the guidelines and proposals to the person listed above under the caption Consolidation of Rulemaking Documents. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposed rules.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on <http://www.regulations.gov>. 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. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, “Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),” filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being “Duck Hunting Regulations for 2020–21,” with its corresponding June 2020 finding of no significant impact. In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the person listed above under the caption Consolidation of Rulemaking Documents.

Endangered Species Act Consideration

Before issuance of the 2021–22 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter “the Act”), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or

threatened or adversely modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it will have an annual effect of \$100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2021–22 season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available (see discussion under Regulatory Flexibility Act, below). This analysis estimated consumer surplus for three alternatives for duck hunting regulations. As defined by the U.S. Office of Management and Budget in Circular A–4, consumers’ surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit (U.S. Office of Management and Budget page 19, 2003). The duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2020–21 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2020–21 season. For the 2020–21 season, we chose Alternative 3, with an estimated

consumer surplus across all flyways of \$263–\$347 million with a mid-point estimate of \$305 million. We also chose alternative 3 for the 2009–10 through 2020–21 seasons. The 2021–22 analysis is part of the record for this rule and is available at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2020–0032.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, 2013, 2018, 2019, and 2020. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2020 Analysis is based on the 2016 National Survey and the U.S. Department of Commerce’s County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$2.1 billion at small businesses in 2020. Copies of the analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2020–0032.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of \$100 million or more. However, because this rule would establish hunting seasons, which are time sensitive, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, “North American Woodcock Singing Ground Survey” (expires 06/30/2021).
- 1018–0023, “Migratory Bird Surveys, 50 CFR 20.20” (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20” (expires 06/30/2021).

You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking would not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, would reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are *de minimis* effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2021–22 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule published in spring and final rule published in summer 2021. Through this process to establish annual hunting regulations, we regularly coordinate with tribes that would be affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which

seasons meet their individual needs. Any State or Indian tribe may be more restrictive in its regulations than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Reducing Regulation and Controlling Regulatory Costs—Executive Order 13771

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to establish annual harvest limits related to routine hunting or fishing.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2021–22 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2021–22 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. Due to the coronavirus pandemic, several annual monitoring activities that provide information used in developing regulatory recommendations have been temporarily cancelled or otherwise impacted. We intend to follow existing harvest management strategies to the extent possible, although some modifications will be necessary due to the absence of status information for 2020 for many species and populations of game birds. Service staff are in the process of developing adjustments to

the strategies to accommodate this issue. Given the recent cancellations, we cannot provide specific changes at this time, but will detail the changes in subsequent rulemaking and notices published in the **Federal Register**. Issues requiring early discussion, action, or the attention of the States or tribes are described below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations are discussed below.

A. General Harvest Strategy

We will continue to use adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2021–22 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway. We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, and pintails, within the general duck season. These protocols use the same outside season dates and lengths as those regulatory alternatives for the 2021–22 general duck seasons.

For the 2021–22 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock that contributes primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, **Federal Register** (73 FR 43290), and for eastern waterfowl in the September 21, 2018, **Federal Register** (83 FR 47868).

Due to the coronavirus pandemic and associated travel restrictions and human health concerns in the United States and Canada, certain migratory bird monitoring surveys have been cancelled in 2020. This includes the Waterfowl Breeding Population and Habitat Survey, which provides status information for many species of waterfowl, including those used in our AHM protocols. Consequently, in some cases, we will need to deviate from our AHM protocols and other decision processes to address missing data from 2020. We will adjust our AHM protocols and decision tools for general duck seasons and species of concern, including pintails, scaup, black ducks, canvasbacks, and wood ducks only to the extent necessary to inform the regulatory decisions for the 2021–22 season. For existing AHM protocols, we propose to use the strategy for each flyway, but use the long-term data and models to predict 2020 spring abundances of ducks and habitat conditions in place of the spring 2020 data, which will not be available. The predicted 2020 breeding populations would be overlaid on the 2019 policies (*i.e.*, the 2019–20 matrix of breeding population and pond counts) to develop recommendations for the 2021–22 hunting season. For other decision support tools such as those used for canvasback and blue-winged teal, similar to AHM protocols, we will develop statistical predictions of the 2020 spring abundance of these species to inform harvest regulation decisions for the 2021–22 hunting season. We will work cooperatively with the Flyway Councils as we develop a plan for addressing missing data in regulatory decision-making for the 2021–22 hunting season, and will post specific details about deviations from our AHM protocols and decision support tools on our website at <https://www.fws.gov/birds> when they become available.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the “moderate” and “liberal” regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. In 2018, we adopted a closing duck framework date of January 31 for the

“moderate” and “liberal” alternatives in the Atlantic Flyway as part of the Atlantic Flyway’s eastern waterfowl AHM protocol (83 FR 47868; September 21, 2018). We subsequently extended the framework closing date to January 31 across all four Flyways for the 2019–20 hunting season (84 FR 16152; April 17, 2019).

More recently, the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9) amended the Migratory Bird Treaty Act to establish that the closing framework date for duck seasons will be January 31, unless a flyway chooses an earlier closing date. Thus, in 2019, as directed by the Dingell Act, we adjusted the framework closing date under each regulatory alternative for all four Flyways to January 31 (84 FR 42996; August 19, 2019). In 2020, we agreed to move the opening framework date to one week earlier in the restrictive regulatory alternative for the Mississippi and Central Flyways beginning with the 2021–22 season based on their recommendations (85 FR 15870; March 19, 2020).

For the 2021–22 general duck season, we propose to utilize the same regulatory alternatives that are in effect for the 2020–21 season, with the exceptions noted above (see table at the end of this proposed rule for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as “RES” for the restrictive, “MOD” for the moderate, and “LIB” for the liberal alternative. We will finalize AHM regulatory alternatives for the 2021–22 season in the supplemental proposed rule, which we will publish about mid-September (see Schedule of Biological Information Availability, Regulations Meetings and **Federal Register** Publications for the 2021–22 Hunting Season at the end of this proposed rule for further information). We will propose a specific regulatory alternative in or around December 2020 for each of the Flyways to use for their 2021–22 seasons after status information and results from analytical adjustments to strategies become available in about late August 2020.

D. Special Seasons/Species Management

xi. Other

For the Atlantic Flyway, under the eastern waterfowl AHM protocol for the Atlantic Flyway, the mallard bag limit is not prescribed by the regulatory alternative, but is instead based on a separate assessment of the harvest potential of eastern mallards. We will

propose a specific mallard bag limit for the Atlantic Flyway in or around December 2020.

Also, although not part of any current harvest management strategy, we propose to allow South Dakota and Nebraska to conduct a pilot study during the 2021–22 duck season of a two-tier license system as described in the March 19, 2020, proposed rule (85 FR 15870). The intent of the two-tier license study is to evaluate whether regulations that relax hunters' requirement to identify duck species can improve waterfowl hunter recruitment and retention. Declines in waterfowl hunter numbers have been of concern to the Service and the Flyway Councils, prompting the development of recruitment, retention, and reactivation (R3) efforts in the conservation community. The study would allow

each person to obtain one of two license types during the duck season. The first license type would allow a daily bag limit as specified in the current duck regulations (six birds), along with attendant species and sex restrictions. The second license type would allow a daily bag limit of only three ducks, but they could be of any species or sex. Additional years of study would be contingent on whether results from this first duck season warrant additional investigation. Memoranda of agreement between the Service and the two States are being developed to specify the purpose of the study and the roles and responsibilities of each party while conducting the pilot study.

14. Woodcock

We propose to change the opening framework date for American woodcock

in the Eastern and Central Management Regions to a fixed date of September 13. Framework dates currently are October 1–January 31 and the Saturday nearest September 22–January 31 for the Eastern and Central Management Regions, respectively. Results from an assessment conducted by Service staff suggest that total season harvest would not increase in either management region as a result of these changes. The assessment can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. The American Woodcock Harvest Strategy is available on our website at <https://www.fws.gov/birds/surveys-and-data/webless-migratory-game-birds/american-woodcock.php>.

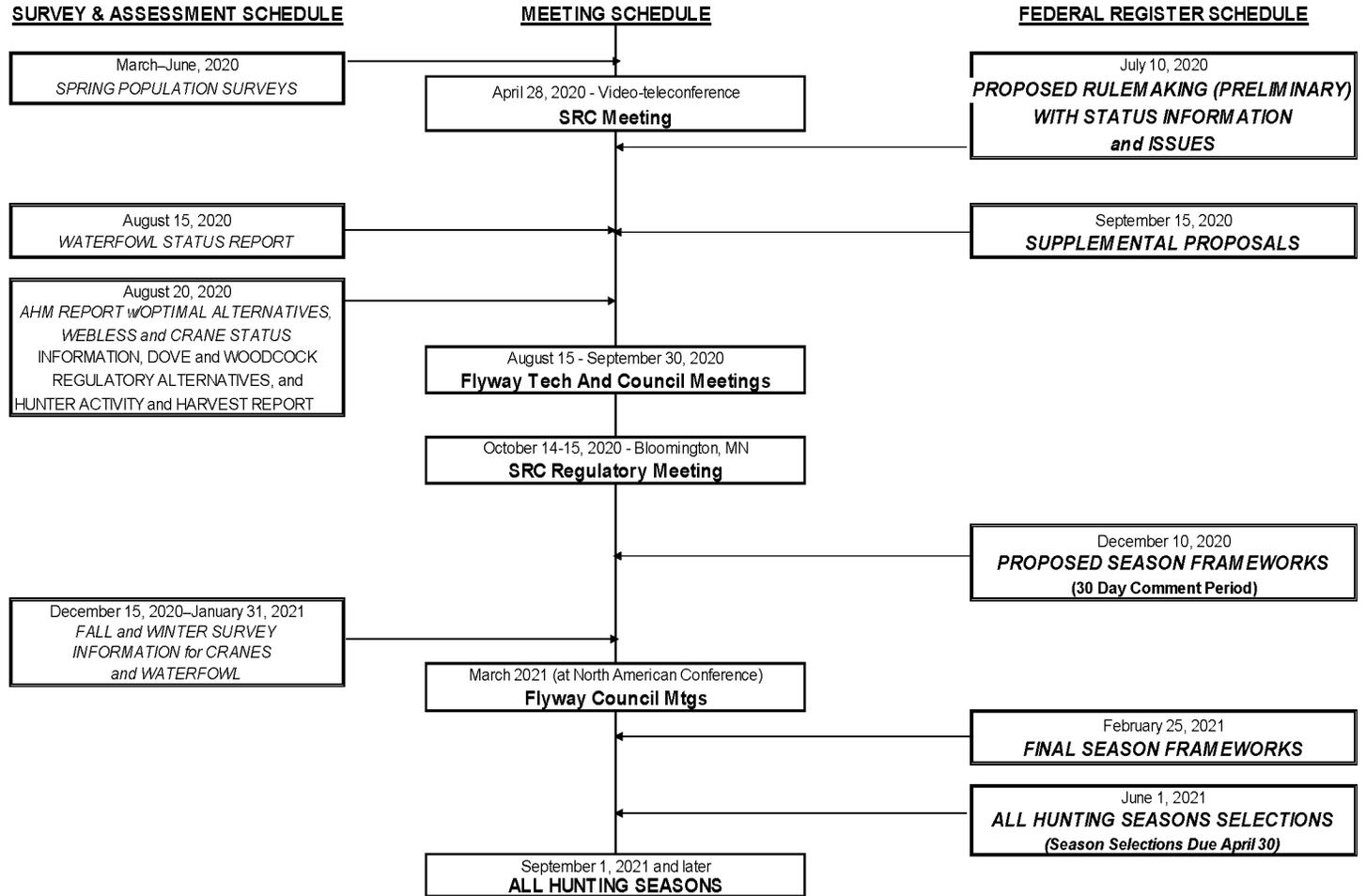
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PROPOSED REGULATORY ALTERNATIVES FOR THE 2021–22 GENERAL DUCK SEASONS

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB									
Beginning Shooting Time	1/2 hr. before sunrise											
Ending Shooting Time	Sunset											
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24							
Closing Date	Jan. 31											
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	(d)	(d)	(d)	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

- (a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.
- (b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.
- (c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1–Jan. 26.
- (d) Under the proposed multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit would not be prescribed by the regulatory alternative.

SCHEDULE OF BIOLOGICAL INFORMATION AVAILABILITY, REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS FOR THE 2021–22 HUNTING SEASON



[FR Doc. 2020-22459 Filed 10-6-20; 4:15 pm]
BILLING CODE 4333-15-C

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 36**

[Docket No. FWS-R7-NWRS-2017-0058;
FXRS1265070000 201 FF07R06000]

RIN 1018-BC74

Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period, and announcement of a public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service, are reopening the public comment period and announcing a public hearing on our recently published proposed rule to amend our public use regulations for Kenai National Wildlife Refuge (NWR) to allow State-regulated trapping, harvest of brown bears over bait, discharge of firearms along the Kenai and Russian Rivers during certain times of the year in accordance with State law, increased access for the public using bicycles and game carts, and the use of snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover. This action will provide all interested parties additional time and opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: *Written comments:* The comment period on the proposed rule that published June 11, 2020 (85 FR 35628), is reopened. We will accept comments received or postmarked on or before November 9, 2020. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date, and comments submitted by U.S. mail must be postmarked by that date to ensure consideration.

Public hearing: We are holding a public hearing via teleconference and over the internet so that participants can attend remotely on October 26, 2020 beginning at 4 p.m. Alaska Daylight Time (AKDT).

ADDRESSES: *Availability of documents:* You may obtain copies of the June 11, 2020, proposed rule and associated documents on the internet at <http://www.regulations.gov> under Docket No. FWS-R7-NWRS-2017-0058.

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for FWS-R7-NWRS-2017-0058, which is the docket number for the proposed rule. You may submit a comment by clicking on "Comment Now!" Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R7-NWRS-2017-0058, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

(3) *At the public hearing:* There will be an opportunity for you to provide oral public comment by telephone or webinar. See Public Hearing, below, for more information.

We request that you submit comments only by the methods described above. We will post all comments we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT:

Andy Loranger, Refuge Manager, Kenai National Wildlife Refuge, 1 Skihill Road, Soldotna, AK 99669; telephone: 907-262-7021. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

Refuge management is governed by Federal laws, such as the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended (Refuge Administration Act); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57), which amended the Refuge Administration Act; and the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96-487); by regulations implementing these laws; by treaties; by Service policy; and by principles of sound resource management that establish standards for resource management or limit the range

of potential activities (e.g., visitor use opportunities administered via special use permitting) that may be allowed on the Refuge.

On June 11, 2020, we published a proposed rule (85 FR 35628) to revise the public use regulations for Kenai NWR. This proposed rule addresses interests raised by the State of Alaska regarding the management of Alaska National Wildlife Refuges. Federal regulations regarding these refuges are found in title 50 of the Code of Federal Regulations (CFR) at part 36; the public use regulations for Kenai NWR are set forth at 50 CFR 36.39(i). The proposed rule's regulatory changes include allowing the harvest of brown bears at registered bait stations, allowing for trapping under State law without a Federal permit, allowing the discharge of firearms along the Kenai and Russian Rivers at certain times of year, increasing access by bicycles and game carts, and allowing snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover. The purpose of the proposed rule is to align public use regulations on Kenai NWR with State of Alaska regulations, align Service and State management of fish and wildlife to the extent practicable and consistent with Federal law, enhance consistency with harvest regulations on adjacent non-Federal lands and waters, and increase access to Federal lands in furtherance of Secretarial Orders 3347 and 3356.

The June 11, 2020, proposed rule had a 60-day public comment period, ending August 10, 2020. During the comment period for the proposed rule, we received several requests for both extension of the public comment period and a public hearing. We are, therefore, reopening the comment period on our June 11, 2020, proposed rule (see **DATES**, above), to hold a public hearing as required by Service regulations at 50 CFR 36.42(g) for opening public uses otherwise prohibited on National Wildlife Refuges in Alaska and to allow the public additional opportunity to provide comments on our proposal.

For a description of previous Federal actions concerning refuge-specific regulations for Kenai NWR, please refer to the June 11, 2020, proposed rule (85 FR 35628).

Public Comments

We will accept comments and information during this reopened comment period on our June 11, 2020, proposed rule to revise the public use regulations for Kenai NWR. It is the policy of the Department of the Interior, whenever practicable, to afford the

public an opportunity to participate in the rulemaking process. Accordingly, we will accept written comments and information from all interested parties during the reopened comment period (see **DATES**) on the provisions in the proposed rule, as well as other provisions of 50 CFR 36.39(i). We are soliciting public comment and supporting data to gain information on the draft environmental assessment and the proposed rule. In addition, we are soliciting information that would help inform the Service's regulatory impacts analysis, such as costs and benefits and trade-offs associated with the proposed changes to the Kenai NWR public use regulations. As a specific example, we are soliciting information or data that would help the Service quantify the effects of increasing opportunities for consumptive uses, such as brown bear hunting through the proposed allowance of hunting this species over bait on opportunities for non-consumptive uses, such as viewing and photography of brown bears on Kenai NWR, including any economic impacts which might result.

We will consider information and recommendations we received during the original comment period, as well as those that we receive during this reopened comment period, in our final determination on the June 11, 2020, proposed rule. If you already submitted comments or information on the June 11, 2020, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please see **DATES**, **ADDRESSES**, and Public Hearing in this document for information on providing your comments through verbal testimony during the public hearing.

If you submit information via <http://www.regulations.gov>, your entire

submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R7-NWRS-2017-0058.

Our final determination concerning the June 11, 2020, proposed action will take into consideration all written comments we receive during the open comment periods, and comments we receive during the public hearing. These comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination.

Public Hearing

We are holding a public hearing on the date listed in **DATES**. We are holding the hearing via teleconference and over the internet so that participants can attend remotely. For security purposes, registration is required. To listen to the meeting by telephone, listen and view through the internet, or provide oral public comments by telephone or webinar, you must register. Please see the Kenai National Wildlife Refuge website at https://www.fws.gov/refuge/Kenai/visit/rules_and_regulations.html for information on how to register. Registrants will receive the telephone number and internet address for the public hearing.

We are holding the public hearing to provide interested parties an opportunity to learn about and present verbal testimony (formal, oral comments) regarding the June 11, 2020 (85 FR 35628), proposed rule to revise the public use regulations on Kenai NWR. A public hearing is not, however, an opportunity for individual dialogue

with the Service or its contractors; it is most importantly a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, U.S. mail, or hand-delivery (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing on the Kenai National Wildlife Refuge website at https://www.fws.gov/refuge/Kenai/visit/rules_and_regulations.html.

The U.S. Fish and Wildlife Service is committed to providing access to this teleconference/webinar for all participants. Persons with disabilities requiring reasonable accommodations to participate in the public hearing should contact the Kenai NWR (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the hearing to help ensure availability.

Authors

The primary authors of this document are the National Wildlife Refuge System staff of the Alaska Regional Office, U.S. Fish and Wildlife Service.

Authority

The authorities for this action are the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended; the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); and the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487).

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–21981 Filed 10–8–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 197

Friday, October 9, 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

Submission for OMB Review; Comment Request

October 6, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 9, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Accreditation of Laboratories, Transactions, and Exemptions.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, et seq.). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are wholesome, not adulterated, and properly labeled and packaged. The Federal Meat Inspection Act (21 U.S.C. 642.), the Poultry Products Inspection Act (21 U.S.C. 460 (b)) requires certain parties to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and part. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS will collect information using several FSIS forms.

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products, and to ensure that retail firms qualifying for a retail store exemption and who have violated the provision of the exemption are no longer in violation. If the information was not collected or collected less frequently it would reduce the effectiveness of the meat and poultry inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 26,176.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 113,471.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–22422 Filed 10–8–20; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest; Alaska; Greens Creek Mine North Extension Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: In June 2020, the United States Department of Agriculture Forest Service (Forest Service), Tongass National Forest, received a proposal from Hecla Greens Creek Mining Company (HGCMC), the owner/operator of the Greens Creek Mine (Mine), to amend the 2013 General Plan of Operations. This proposed plan amendment as described in HGCMC's proposed North Extension Project (NEP) would expand the disturbance area currently approved by the Forest Service under the 2013 Greens Creek Mine Tailings Disposal Facility Expansion FEIS. To assess HGCMC's proposed NEP, the Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS). This notice advises the public that the Tongass National Forest is gathering information necessary to prepare an SEIS to evaluate the effects of changing the Plan of Operations via HGCMC's proposed NEP.

DATES: Comments concerning the scope of the analysis must be received by November 23, 2020. The draft SEIS is expected October 2021, and the final SEIS is expected October 2022.

ADDRESSES: Send written comments to Tongass National Forest, Greens Creek NEP SEIS, 8510 Mendenhall Loop Rd., Juneau, Alaska 99801. Comments may also be sent via email to sm.fs.greenscreek@usda.gov, or via facsimile to 907–586–8808.

FOR FURTHER INFORMATION CONTACT: Basia Trout, Admiralty Island National Monument Ranger or Matthew Reece, Minerals Program Manager, Tongass National Forest at the Juneau Ranger

District, 8510 Mendenhall Loop Rd., Juneau, Alaska 99801 or by telephone at 907-586-8800, between 8:00 a.m. and 4:00 p.m., Alaska Standard Time, Monday through Friday.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This SEIS will supplement the 2013 Greens Creek Mine Tailings Disposal Facility Expansion FEIS and the 1983 Greens Creek Mine FEIS and 2003 Greens Creek Tailings Disposal FEIS. Information from the previous documents will be brought forward into this SEIS as necessary. The previous FEIS' along with other supporting documents are available at: <https://www.fs.usda.gov/project/?project=57306>.

Project Location: The mine property is located on Admiralty Island in the Tongass National Forest adjacent to the south side of Hawk Inlet. The mine is approximately 18 air miles southwest of Juneau and 43 air miles north of Angoon, Alaska. The site is currently accessible by floatplane, helicopter, or boat and is within the administrative boundary of the City and Borough of Juneau. The mine covers both private lands and National Forest System lands.

Tongass Land and Resource Management Plan (Forest Plan): The primary land use designation in the Forest Plan for the project area of this proposal is Semi-remote Recreation, with the southern portion of the project area located in the Nonwilderness National Monument land use designation.

Purpose and Need for Action

The purpose of this SEIS is for the Forest Service to consider certain changes to the approved General Plan of Operations regarding tailings and waste rock disposal and related infrastructure. The proposed action is to extend the Tailings Disposal Facility footprint to provide for an additional four to five million tons of tailings and waste rock disposal capacity, in a manner that minimizes disturbance. To the extent practical, the extended footprint and new associated supporting infrastructure would be located on areas already disturbed and/or on areas immediately adjacent to existing disturbance. With continued positive exploration results, improved metal prices, and ongoing operational efficiencies, there is a need for additional tailings and waste rock disposal and related infrastructure at the Greens Creek Mine to allow for

continuous site operations in a safe, environmentally sound, technically feasible, and economically viable manner, while being in compliance with regulatory requirements.

Proposed Action

HGCMC has proposed the North Extension Project to provide an additional estimated four to five million cubic yards of tailings and waste rock storage at the Greens Creek Tailings Disposal Facility, allowing the planned mineral production at the mine site to continue pursuant to applicable law and pre-existing rights beyond the year 2031, when the current disposal capacity is expected to be exhausted. The proposal to expand the disturbance area authorized under the approved 2013 General Plan of Operations includes the following main elements:

- Avoid new Monument disturbance outside the existing Forest Service-approved HGCMC Lease Boundary ("Lease Boundary") and minimizing disturbance to the portion of the Monument within the Lease Boundary;
- Avoid direct disturbance to fish-bearing reaches of Tributary Creek;
- Avoid construction of a new "remote" Tailings Disposal Facility;
- Continue the same or similar dry-stack tailings disposal method, which has been previously reviewed and approved by the Forest Service;
- Extend the existing Tailings Stack in a manner that minimize disturbance. To the extent practical, locate the extended Tailings Stack and new associated supporting infrastructure on areas already disturbed and/or on areas immediately adjacent to existing disturbance. Where possible, use in-place infrastructure (roads, water treatment facilities, drainage control, etc.);
- Minimize direct new disturbance to environmental resources and sensitive habitats, such as jurisdictional waters of the United States;
- Consider closure and reclamation as part of design and operations;
- Design and construct the TDF to be technically feasible and environmentally sound;
- Comply with applicable federal, state and local legal and regulatory standards.

In general, the NEP focuses on expansions of mine facilities presented in the 2013 General Plan of Operations. If approved, the NEP would be incorporated into the existing General Plan of Operations where changes are proposed; however, any items not discussed in the NEP would refer back to the approved Plan of Operations for resolution.

Possible Alternatives

A no-action alternative, which represents no changes to the approved 2013 General Plan of Operations and serves as the baseline for the comparison among the action alternatives, will be analyzed in addition to the proposed action. An alternative to place additional tailings and waste rock in another location, outside the Monument, will also be considered. Comments received in response to this Notice of Intent may identify additional reasonable alternatives.

Lead and Cooperating Agencies

The USDA Forest Service is the lead agency for the proposed action and compliance with the National Environmental Policy Act (NEPA). The Tongass National Forest has identified multiple agencies with special expertise with respect to the proposed action that could serve as cooperating agencies. The U.S. Army Corps of Engineers has special expertise with assessing impacts to waters of the United States, including wetlands; additionally, a Section 404 of the Clean Water Act permit will be needed from this agency. From the State of Alaska, at least three departments could be cooperating agencies due to their expertise and involvement in evaluations for this type of permit application. These departments include the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources. Locally, the City and Borough of Juneau could be a cooperating agency as the Mine is within its boundaries and it issues permits for certain facilities at the Mine. The Tongass National Forest will conduct an effort to formally identify cooperating agencies.

Responsible Official

The Responsible Official for the decision on this project is the Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901.

Nature of Decision To Be Made

The Forest Supervisor is the Responsible Official for this action and will decide whether or not to amend the approved Plan of Operations. The decision will be based on information that is disclosed in the Final SEIS. The Responsible Official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and state the rationale in the Record of Decision. Based on the information in the Final SEIS and ROD, the U.S. Army

Corps of Engineers (USACE) will decide whether to issue a Clean Water Act, Section 404 individual Department of Army permit for placement of fill or dredge material in waters of the United States based on USACE's determination of compliance with the Environmental Protection Agency's 404(b)(1) Guidelines (40 CFR 230), including selection of the least environmentally damaging practicable alternative and the public interest review finding at 33 CFR 320.4(a).

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the SEIS through internal and external input on the issues, impacts, and alternatives to consider. The Forest Service will invite the public to participate in virtual scoping meetings in Angoon, Hoonah, and Juneau, Alaska. These meetings will be posted on the Forest's website at <https://www.fs.usda.gov/project/?project=57306> and will be advertised in the Juneau Empire and in the Ketchikan Daily News, the newspaper of record, to announce the date, time, place and purpose of the public scoping meetings.

Forest Service regulations at 36 CFR 218, subparts A and B, regarding the project-level predecisional administrative review process, apply to projects and activities implementing land management plans that are not authorized under the Healthy Forest Restoration Act. Only individuals or entities who submit timely and specific written comments concerning the project during this or another designated public comment period established by the Responsible Official will be eligible to file an objection. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the SEIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous

commenters will not gain standing to object as defined in 36 CFR 218.2.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020-22440 Filed 10-8-20; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Assessing Technology Transfer Activities of the National Center for Reforestation, Nurseries, & Genetics Resources

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to conduct assessment of technology transfer activities by the National Center for Reforestation, Nursery, and Genetic Resources.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, *Assessing Technology Transfer Activities of the National Center for Reforestation, Nurseries, & Genetics Resources*. The United States Department of Agriculture (USDA), United States Forest Service (Forest Service), National Center for Reforestation, Nursery, and Genetic Resources (RNGR) supports the production of native plant materials for reforestation and restoration activities throughout the Nation and its insular areas. RNGR transfers important, science-based information to the managers of Federal, State, Tribal, other government entities, and private nurseries and farms.

DATES: Comments must be received in writing on or before December 8, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Kasten Dumroese, USDA Forest Service, Rocky Mountain Research Station, 1221 South Main Street, Moscow, ID 83843.

Comments also may be submitted via facsimile to 208-883-2318 or by email to: kas.dumroese@usda.gov.

The public may inspect comments received at 1221 South Main Street, Moscow, ID 83843 during normal business hours. Visitors are encouraged to call ahead to 208-882-3557 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT:

Kasten Dumroese, USDA Forest Service,

Rocky Mountain Research Station, kas.dumroese@usda.gov or 208-883-2324. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Assessing Technology Transfer Activities of the National Center for Reforestation, Nurseries, & Genetics Resources.

OMB Number: 0596-NEW.

Type of Request: NEW.

Abstract:

Purpose and Need for Action

The Social and Economic Sciences Research Center (SESRC) at Washington State University will collaborate with RNGR to assess the current and future needs for information technology and services via a survey of nurseries and farms that produce native plant materials for reforestation and restoration throughout the U.S. This assessment will help RNGR better understand how these managers are using RNGR's current products and if information can be shared more effectively and efficiently through new tools and techniques.

The United States Department of Agriculture, Forest Service, National Center for Reforestation, Nursery, and Genetic Resources (RNGR) supports the production of native plant materials for reforestation and restoration activities throughout the Nation and its insular areas. RNGR transfers important, science-based information through on-site visits, regional meetings, webinars, website, books, and newsletters to the managers of Federal, State, Tribal, other government entities, and private nurseries and farms that produce native plant materials for reforestation and restoration.

Because of the rapid changes in technology and the ways communication now occurs, RNGR seeks to better understand how these managers are using RNGR's current products and if information can be shared more effectively and efficiently through new tools and techniques. In addition, RNGR desires to focus technology transfer on issues pertinent to the managers' emerging needs.

The Washington State University, Social and Economic Sciences Research Center will design a survey and collect information through a mail and web survey of the approximately 1,200 managers of Federal, State, Tribal, other government entities, and private nurseries and farms that produce native plant materials for reforestation and

restoration. Information collected will include the name and address of the nursery, whether it is primarily for reforestation or restoration, what current RNGR products and tools the managers use and how effective are those products and tools, and what new technologies and approaches to transferring information might better serve managers. The Social and Economic Sciences Research Center will ensure survey validity and analyze and synthesize the information so that RNGR can implement the findings.

If the survey is not completed, RNGR may continue to use less effective and efficient methods to share science-based information with the managers Federal, State, Tribal, other government entities, and private nurseries and farms that produce native plant materials for reforestation and restoration. The goal of this survey is to implement more cost-effective methods of technology transfer delivered to managers in the best format for them.

Proposed Action

The assessment will utilize survey methods. Survey data will be collected using two modes: (1) electronic (via web) and (2) mail delivered paper questionnaire. All 1,200 users of RNGR resources will be contacted with the following protocols:

- The first mailing will be mailed using first class postage and will include a letter of invitation to complete the survey online with URL, access code;

- Email reminders to participants (those with email addresses) will be sent approximately one week after the invitation letter. Multiple email reminders may be sent (3 days in between email waves). Email messages will be sent to one respondent at a time to minimize spam filter effect. Email messages will come from *an@wsu.edu* email address, which will be "white listed;"

- The questionnaire is approximately 8 pages, printed on 2 sheets of 11x17 paper folded in half. A unique ID (access code) will be printed on the questionnaire for tracking purpose. There will be 2 separate questionnaires for the (1) user and (2) non-user groups;

- Questionnaires will be mailed in 6x9 envelopes with first class postage and will include a personalized letter (containing a URL and access code for online option) and a business reply return envelope and personalized letter;

- Reminder/thank you post cards or letters will be mailed 7 to 10 days after the questionnaire mailing; and

- In addition, we will also attempt to contact organizations in the lists via

telephone to identify the appropriate individuals to contact with regards to the survey. The phone attempts will be conducted after mailing of the paper questionnaire and will reach out to the remaining non-respondents. These phone attempts will serve as an additional reminder to complete the survey.

Follow-Up Semi-Structured Interview

For those who did not respond to the survey, especially those in the non-user group, we will conduct a follow up semi-structured interview via phone with audio recording. The interview will serve two main purposes (1) to determine the reason for not responding to the survey, and (2) to gather more in-depth information about unmet needs or reasons for not using RNGR support services that may or may not be addressed in the quantitative survey.

For those who responded to the survey, some of the responses may warrant further investigation, such as new ideas or issues that were not included in the survey questions. Each interview will take approximately 30 to 45 minutes to complete and will be conducted after the survey data collection period is concluded. Data collected via the above methods will be summarized and analyzed in a technical report. The information will be used to refine the strategic plan for RNGR.

Responsible Official

The responsible official will be Kasten Dumroese, USDA Forest Service, Rocky Mountain Research Station, 1221 South Main Street, Moscow, ID 83843.

Nature of Decision To Be Made

Given the purpose and need, the responsible official will determine whether the proposed actions comply with all applicable laws governing Forest Service actions and whether the proposed action meets the purpose and need for action. With this information, the responsible official must decide whether to select the proposed action or one of any other potential alternatives that may be developed, and what, if any, additional actions should be required.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the assessment questionnaire and survey protocols. Public comments regarding this proposal are requested in order to assist in identifying issues and opportunities associated with the information collection protocols.

Comments are invited on: (1) Whether this collection of information is

necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Affected Public: Managers of Federal, State, Tribal, other government entities, and private nurseries and farms that produce native plant materials for reforestation and restoration.

Estimate of Burden per Response: 20 minutes.

Estimated Annual Number of Respondents: 1,200.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 400 hours.

Comment is Invited: All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Steven W. Koehn,

Director, Cooperative Forestry, State and Private Forestry.

[FR Doc. 2020-22396 Filed 10-8-20; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, November 17, 2020 at 12 p.m. (ET). The purpose of the meeting is to discuss the Committee's project on licensing for formerly incarcerated individuals.

DATES: Tuesday, November 17, 2020 at 12 p.m. (ET).

Conference Call-In Information: 1–800–437–2398; Conference ID: 6978023.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg at mtrachtenberg@usccr.gov or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Federal Relay Service operator with the conference call-in numbers: 1–800–437–2398; Conference ID: 6978023.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Midwestern Regional Programs Office at the above phone number or email address.

Agenda: Tuesday, November 17, 2020 at 12 p.m. (ET)

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of Minutes from the Last Meeting
- IV. Discussion: Licensing for Formerly Incarcerated Individuals
- V. Next Steps
- VI. Public Comment
- VII. Adjournment

Dated: October 5, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–22372 Filed 10–8–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the New Hampshire State Advisory Committee to the Commission will convene a meeting on Monday, November 16, 2020 at 4 p.m. (EDT). The purpose of the meeting is to discuss testimony heard related to its project on solitary confinement in New Hampshire.

DATES: Monday, November 16, 2020 from 4 p.m.–5:30 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–800–437–2398; Conference ID: 5226726

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg at mtrachtenberg@usccr.gov or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing, may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call-in numbers: 1–800–437–2398; Conference ID: 5226726.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the FACA Link; click the “Meeting Details” and “Documents” links. Records generated from this meeting may also be inspected and reproduced at the Midwestern Regional Office, as they become

available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Regional Programs Unit at the above phone number or email address.

Agenda: Monday November 16, 2020 from 4:00 p.m.–5:30 p.m. (EDT)

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of Minutes
- IV. Discussion: Solitary Confinement in New Hampshire
- V. Public Comment
- VI. Next Steps
- VII. Adjournment

Dated: October 5, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–22358 Filed 10–8–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

2020 Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) and the Russian Federation’s State Atomic Energy Corporation Rosatom (ROSATOM) have signed an amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement). The amendment extends the Agreement through 2040 and allows the Russian Federation to export Russian uranium products to the United States in accordance with the export limits and other terms detailed in the amended Agreement.

DATES: Applicable October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jill Buckles, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–6230, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, Commerce signed an agreement with the Russian

Federation's Ministry for Atomic Energy (MINATOM), the predecessor to ROSATOM, under section 734(l) of the Tariff Act of 1930, as amended (the Act), suspending the antidumping duty investigation on uranium from the Russian Federation.¹ The Agreement was subsequently amended, by agreement of both governments, on March 11, 1994,² October 3, 1996,³ May 7, 1997,⁴ and February 1, 2008.⁵ Pursuant to the 2008 amendment, the Agreement and the underlying antidumping investigation were set to terminate on December 31, 2020.

On February 22, 2019, Commerce formally opened consultations with ROSATOM with respect to a possible extension of the Agreement's term.⁶ On September 11, 2020, Commerce and ROSATOM initialed a draft amendment to the Agreement. On September 16, 2020, Commerce published the draft amendment text in the **Federal Register** and invited comments from interested parties, industrial users, and the public to be submitted by September 28, 2020.⁷ On September 11, 2020, Commerce also released a draft memorandum regarding the prevention of price suppression or undercutting of domestic products pursuant to the draft amendment and requested comments to be submitted by September 28, 2020.⁸

On September 25, 2020, Commerce received comments from Strata Energy

¹ See *Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220, 49235 (October 30, 1992).

² See *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994).

³ See *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996).

⁴ See *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997).

⁵ See *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 73 FR 7705 (February 11, 2008).

⁶ See Letter to Rosatom from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation," dated February 22, 2019.

⁷ See *Draft Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation; Request for Comment*, 85 FR 57824 (September 16, 2020).

⁸ See Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement & Compliance, from Joseph A. Laroski, Jr., Deputy Assistant Secretary for Policy & Negotiations, "Prevention of Price Suppression or Undercutting of Price Levels of Domestic Products by the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as Amended," dated September 11, 2020; see also Memorandum to the File, "Comments on Draft Price Suppression Memorandum," dated September 14, 2020.

Inc. On September 28, 2020, Commerce received comments on the draft amendment and draft memorandum from the following parties: Power Resources, Inc. and Crow Butte Resources, Inc.; the Uranium Producers of America; Louisiana Energy Services, LLC; ROSATOM and TENEX, Joint-Stock Company; Exelon Generation Company, LLC, Ameren Missouri, and the Ad Hoc Utilities Group; Centrus Energy Corp. and United States Enrichment Corporation; and Energy Fuels Resources (USA) Inc. and Ur-Energy USA Inc.

Amendment to Agreement

On October 5, 2020, after consideration of the interested party and other comments received, Commerce and ROSATOM signed a finalized amendment to the Agreement.⁹ The text of the finalized amendment is identical to the text released for public comment on September 11, 2020, except for the signature blocks. The amendment extends the Agreement through 2040 and allows for exports of Russian uranium products in the U.S. market in accordance with the export limits and other terms detailed in the amendment. In accordance with section 734(l)(1)(B) of the Act, we have determined that the amended Agreement will prevent the suppression or undercutting of price levels of domestic uranium products by imports of that merchandise from Russia. We have also determined that the amended Agreement is in the public interest and can be monitored effectively, as required under section 734(l)(1)(A) of the Act. The text of the amendment follows in the Annex of this notice with the exception of Appendix 5 which contains business proprietary information and is releasable only under the Administrative Protective Order (APO).

Scope of the Agreement

The product covered by the Agreement is natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U²³⁵ and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U²³⁵ or compounds of uranium enriched in U²³⁵; and any

⁹ See Commerce Memorandum, "Placing the 2020 Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation on the Record," dated October 5, 2020.

other forms of uranium within the same class or kind.

Uranium ore from Russia that is milled into U₃O₈ and/or converted into UF₆ in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Agreement.

For purposes of this Agreement, uranium enriched in U²³⁵ or compounds of uranium enriched in U²³⁵ in Russia are covered by this Agreement, regardless of their subsequent modification or blending. Uranium enriched in U²³⁵ in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Agreement.

HEU is within the scope of the underlying investigation, and HEU is covered by this Agreement. For the purpose of this Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.

Imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings: 2844.10.10 and 2844.10.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Administrative Protective Order Access

The APO Commerce granted in the suspension agreement segment of this proceeding remains in place and effective for the amended Agreement. All new interested parties requesting access to business proprietary information submitted during the administration of the amended Agreement, under the APO currently in effect, must submit an APO application in accordance with Commerce's regulations currently in effect.¹⁰

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: October 5, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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¹⁰ See Section 777(c)(1) of the Act; see also 19 CFR 351.103, 351.304, 351.305, and 351.306.

Annex: 2020 AMENDMENT TO THE AGREEMENT SUSPENDING THE ANTIDUMPING INVESTIGATION ON URANIUM FROM THE RUSSIAN FEDERATION

The Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation is amended as set forth below (2020 Amendment). All other provisions of the Agreement, as amended to date (Agreement), remain in force and apply to this Agreement.

The last paragraph of the Preamble is amended as follows (*changes shown in italics*) and replaces the current paragraph:

The Department and ROSATOM acknowledge that, for purposes of the Agreement, as amended (the “Agreement”), the successor in interest to MINATOM is the Federal Atomic Energy Agency. *The Federal Atomic Energy Agency is now known as the State Atomic Energy Corporation Rosatom* (“ROSATOM”). All references to MINATOM in this Agreement shall be understood to indicate ROSATOM. All exports of Russian Uranium Products are executed through the Russian Government-Owned entity *TENEX, Joint-Stock Company* (“TENEX”) (*formerly known as Techsnabexport*). All references to TENEX include its successors and its affiliated companies. All references to “Customs” shall be understood to indicate United States Customs and Border Protection.

Section II – Definitions – This section is amended as follows (*changes shown in italics*):

(o) “Effective Date *of the 2008 Amendment*” means *February 1, 2008, the date the 2008 Amendment* was signed by both parties.¹¹

The following additional sections are amended to replace “Effective Date” with “Effective Date *of the 2008 Amendment*”:

IV.A

IV.B

IV.B.1.a

IV.B.3

IV.B.4

IV.N

Appendix 3, section 1

Appendix 3, section 2

Insert new definitions following definition (f):

(g) “*Effective Date of the 2020 Amendment*” means *the date on which this 2020 Amendment is signed by both parties.*

(h) “*USEC*” means *the Delaware corporation known, as of the Effective Date of the 2020 Amendment, as United States Enrichment Corporation, a subsidiary of Centrus Energy Corp., or its successor.*

¹¹ See Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (73 FR 7705) (February 11, 2008).

(i) - (k) (reserved)

Section IV.B.1 – Export Limits – Paragraph 1 is amended (*changes shown in italics*) by changing the numbering of paragraph 1 to sub-paragraph “1.a” and by adding additional sub-paragraphs as follows. The purpose of the amended section IV.B.1 is to insert export limits, and certain caps within those export limits, during the period from January 1, 2021 through December 31, 2040:

1.b The annual export limits for 2021-2040 are as follows (expressed in KgU as LEU, at a product assay of 4.4 percent and a tails assay of 0.3 percent, and in Kg U-235 content). In addition, caps for LEU exports pursuant to sales of EUP (which may include sales of SWU plus conversion), as well as caps for additional LEU exports pursuant to sales of SWU plus conversion only, are as follows.

<u>Export Limit Year</u>	<u>Percentage of U.S. Enrichment Demand</u>	<u>Total Export Limit in KgU as LEU (A)</u>	<u>Total Export Limit in Kg U-235 Content (B)</u>	<u>Cap for LEU Exports Pursuant to Sales of EUP (may include Sales of SWU plus Conversion) in Kg U-235 (C) (Subset of B)</u>	<u>Cap for Additional LEU Exports Pursuant to Sales of SWU plus Conversion Only in Kg U-235 (D) (Subset of B)</u>	<u>USEC Export Limit Allocation in Kg U-235¹² (E) (Subset of B)</u>
2021	24%	596,682	26,254	16,409	1,094	7,780
2022	20%	489,617	21,543	10,556	3,231	7,430
2023	24%	578,877	25,471	10,825	3,277	10,700
2024	20%	476,536	20,968	5,976	2,834	10,200
2025	20%	470,376	20,697	5,485	2,834	10,300
2026	20%	464,183	20,424	5,106	0	10,700
2027	20%	459,083	20,200	5,050	0	10,600
2028	15%	344,312	15,150	5,050	0	4,100
2029	15%	340,114	14,965	4,988	0	0
2030	15%	332,141	14,614	4,871	0	0
2031	15%	328,862	14,470	4,823	0	0
2032	15%	322,255	14,179	4,726	0	0
2033	15%	317,536	13,972	4,657	0	0
2034	15%	298,088	13,116	4,372	0	0
2035	15%	294,511	12,958	4,319	0	0
2036	15%	286,066	12,587	4,196	0	0
2037	15%	281,272	12,376	4,125	0	0
2038	15%	277,124	12,193	4,064	0	0
2039	15%	277,124	12,193	4,064	0	0
2040	15%	267,685	11,778	3,926	0	0

¹² These numbers have been ranged. See Appendix 5, which contains a business proprietary version of Column E.

These limits were derived from the Lower scenario U.S. enrichment demand projection data in the World Nuclear Association's 2019 "The Nuclear Fuel Report, Global Scenarios for Demand and Supply Availability 2019-2040." To match the projected reactor demand for subsequent years the Department shall, within 3 months following the update of that publication or its successor in 2023, 2029, and 2035, update these export limits by adjusting them to the new projections using 4.4% product assay and 0.3% tails assay based upon the Lower scenario. With each update, the Department shall also increase the total export limits for the remaining years by the net amount by which the export limits for previous years have fallen short of the export limits that would have been derived from the revised demand figures for those years, with any additional export allowances being divided equally between the revised export limits for the remaining years. Russian Uranium Products may be exported to the United States under a contract approved by the Department under this Agreement, even if such exports exceed the export limits in effect at the time of delivery.

Column B represents the maximum export limit quantity in Kg U-235 content for each Year of this Agreement. The following additional requirements apply:

- i. Of the quantities in Column B, the quantities in Column C may be exported pursuant to sales of EUP (which may include sales of SWU plus conversion);*
- ii. Of the quantities in Column B, the quantities in Column D may be exported pursuant to additional sales of SWU plus conversion only, in addition to the quantities in Column C;*
- iii. The remaining export quantities ($= B - (C + D)$) must be exported pursuant to sales of enrichment (i.e., SWU) only;*
- iv. For 2021-2028: of the quantities in Column B, the quantities in Column E may be imported into the United States by USEC pursuant to sales by TENEX to USEC of enrichment (i.e., SWU) in LEU, with return of natural uranium feed material to TENEX.*

All contracts and contract amendments, as appropriate, for deliveries under the annual export limits must be approved by the Department under sections V.C.(1) and V.F of this Agreement.

1.c For 2021-2025:

- i. Any delivery quantities under contracts or contract amendments concluded after March 31, 2020 must be pursuant to sales of enrichment (i.e., SWU) only and not sales of EUP or SWU plus conversion;*

ii. *If the EUP and/or SWU plus conversion caps exceed the actual imported shipment quantities, then the excess EUP and/or SWU plus conversion quantities will expire; and*

iii. *EUP and/or SWU plus conversion quantities may only be used for delivery quantities under contracts or contract amendments concluded prior to March 31, 2020 and may not be transferred from one contract to another.*

1.d Where Russian LEU is sold into the United States under a contract for the sale of enrichment (SWU), or the sale of enrichment (SWU) plus conversion, the natural uranium feed quantity (UF₆ or U₃O₈, as applicable) equal to the feed component of the LEU to be delivered must be returned or provided by the U.S. customer to TENEX at approximately the same time as the Russian LEU is delivered to the U.S. utility end-user (unless the Department has approved an extension), and, regardless of the location of the return or provision of natural uranium feed to TENEX (i.e., whether inside or outside of the United States), TENEX must certify to the following upon the importation of the Russian LEU:

i. *The natural uranium feed returned or provided to TENEX by its U.S. customer shall be deemed to be of Russian origin (if it is not, in fact, already designated as being of Russian origin) for purposes of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation at the time of deposit, exchange, or return, and shall clearly be identified as being of Russian origin in all book accounting and all accompanying documentation and packaging;*

ii. *The natural uranium feed returned or provided to TENEX by its U.S. customer shall be immediately quarantined in a dedicated account exclusively for the accounting of this material at the relevant facility and shall not be sold, loaned, swapped, used as loan repayments or working stock, or utilized in any way other than in accordance with the terms of the Agreement;¹³ and*

iii. *The natural uranium feed (U₃O₈, alone or as contained in UF₆) returned or provided to TENEX by its U.S. customer and held in a dedicated account shall be either (i) exported to the Russian Federation within 18 months of the date that it is returned or provided to TENEX (whether inside of the United States or in a third country), or (ii) if returned or provided to TENEX in a third country, it may be sold and/or enriched in that or other third country with the following restrictions: (a) if the natural uranium feed contains U₃O₈ that was not mined in the United States, then it shall retain its deemed-Russian origin subsequent to third-country enrichment and shall be subject to the terms of this Agreement, and (b) if the natural uranium feed contains U₃O₈ that was mined in the United States, then its origin will be conferred by the place of third-country enrichment.*

¹³ *The requirement that returned feed must be credited to a dedicated account does not include the necessity to physically store such material separately from like uranium products of other customers or for other purposes; such material may be physically commingled at the storage location with any other like uranium products.*

For purposes of the preceding sentence, “mined in the United States” means that the uranium is produced on or after the Effective Date of the 2020 Amendment at, or previously produced by and held in inventory of, a uranium mine or mill located in the United States; was not produced at a mine or mill directly or indirectly owned or controlled by the Government of the Russian Federation or an agency or agent thereof; and was not produced as a result of enrichment underfeeding or re-enrichment of depleted tails.

Section IV.D – is amended as follows (*changes shown in italics*), including by adding subparagraphs 1 through 4, and replaces the current section:

D.1 Carry-back: Except for any increase added pursuant to section IV.C, if, in any particular Year, the Department permits any Russian Uranium Products to enter the United States in excess of the export limit for that Year, the amount of the excess added to that Year may not exceed 10 percent of the export limit for that particular Year, and shall be ~~charged against~~ deducted from the export limit for the first subsequent Year or Years in which the export limit has not been contractually obligated in full. Carry-back is not permitted from any Year that is more than three years away.

D.2 Carry-forward: If the amount entered in any particular Year falls below the export limit for that Year, the amount of the shortfall may be added to the export limit for the subsequent Year or a Year that is not more than three years away only, up to 10 percent of the export limit for the particular Year in which the shortfall occurs.

D.3 The total amount carried back and carried forward to any particular Year may not increase the export limit for that Year by more than 10 percent. Any carry-back or carry-forward shall be contingent upon specific requests by TENEX and upon the Department’s express approval of such requests.

D.4 The carry-back and carry-forward provisions may only be applied to Department-approved contracts for sales of enrichment (i.e., SWU) only.

Section XII. – Duration – This section is amended as follows (*changes shown in italics*):

As of the Effective Date of this Amendment, each of the petitioners in the suspended investigation, or their legal successors, has filed with the Department an irrevocable letters expressly withdrawing the petition in the antidumping investigation, effective December 31, 2020. These letters are attached to this Amendment as Appendix 4. The Agreement will terminate on December 31, 2020. Upon its termination on December 31, 2020, the Department shall terminate the antidumping investigation effective on that date.

*The Department, before February 1, 2008, the Effective Date of the 2008 Amendment, acknowledges the remand of the U.S. Court of International Trade of September 26, 2007, in *Technabexport v. United States*, Ct. No. 06-00228, including the Court’s direction that “Commerce follow the precedent by which it is bound, articulated in the Eurodif cases.” As directed by the Court of International Trade, the Department will abide by the Eurodif decisions*

in its determination of the likelihood of continued or recurring dumping. Therefore, on the Effective Date, Techsnabexport will file a motion in Techsnabexport v. United States under Rule 41 of the U.S. Court of International Trade Rules. The United States will not appeal the September 26th decision in Techsnabexport v. United States.

A. *In addition,* ~~†~~The Department shall conduct sunset reviews under 19 U.S.C. § 1675(c) in the years 2011, ~~and~~ 2016, 2022, 2028, and 2034. All parties agree that ~~these~~ sunset reviews shall be expedited, pursuant to 19 U.S.C. §§ 1675(C)(4) and (C)(3)(B), respectively, at both the Department of Commerce and the International Trade Commission. *Thereafter, the Department shall conduct sunset reviews under 19 U.S.C. § 1675(c) that follow the normal course (i.e., whether expedited or full, as applicable).*

B. *At the request of either party to this Agreement, the Department and ROSATOM shall enter into good-faith consultations on potential extension of this Agreement beyond its term, including through 2045 or beyond, and the parties will use their reasonable efforts to agree on extension of this Agreement and the associated terms within one year after the mentioned request for consultations.*

C. ~~MINATOM~~ ROSATOM may ~~terminate~~ provide notice of intent to terminate this Agreement at any time ~~upon notice to the Department~~. Termination shall be effective ~~60~~ 365 days after such notice is given to the Department. Upon termination at the request of ~~MINATOM~~ ROSATOM, the provisions of Section 734(i) of the Act shall apply, *as though the Department made a finding that the Agreement no longer meets the statutory requirements or a violation had occurred.*

D. If the Department has determined that a sufficient amount of time has elapsed between the effective date of this Agreement and the date of termination, the Department will follow the provisions of ~~Sections XIII.(b)-XIII.A(b) or XIII.(e)-XIII.A(c)~~ of this Agreement.

Section XIV.B – Other Provisions – Paragraph B is amended as follows (*changes shown in italics*) and replaces the current paragraph:

B. For all purposes relating to the Agreement, the Department and ROSATOM shall be represented by, and all communications and notices shall be given and addressed to:

Department Contact:
United States Department of Commerce
Assistant Secretary
for *Import Administration Enforcement*
& Compliance
International Trade Administration
1401 Constitution Ave., N.W.
Washington, D.C. 20230

ROSATOM Contact:
State Atomic Energy Corporation Rosatom
~~State Secretary~~, Deputy Director General for
International Cooperation
24 Bolshaya Ordynka St., 119017 Moscow,
Russian Federation ~~Federal Atomic Energy~~
Agency (ROSATOM)
Staromonetnyy per., 26, 119180

Appendix 1 – This appendix is amended as follows (*changes shown in italics*).

“1992 Sections IV.E-IV.G – remain in effect” is changed to:

“1992 Sections IV.E and IV.F are changed to Sections IV.O and IV.P, respectively, and remain in effect.

1992 Section IV.G –remains in effect.”

Appendix 4 – This appendix is deleted in its entirety.

Appendix 5 – This appendix is added and contains business proprietary information.

Signed on this 5 day of October, 2020.

For the U.S. Department of Commerce:

**For the State Atomic Energy Corporation
Rosatom:**

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Alexey Likhachev
Director General of ROSATOM

[FR Doc. 2020–22431 Filed 10–8–20; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–820]

Biodiesel From Argentina: Rescission of Antidumping Duty Administrative Review: 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on biodiesel from Argentina for the period of review (POR) April 1, 2019, through March 31, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, 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) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2020, Commerce published a notice of opportunity to

request an administrative review of the AD order on biodiesel from Argentina for the POR.¹ On April 30, 2020, Commerce received a timely-filed request from the National Biodiesel Board Fair Trade Coalition (the petitioner)² for an administrative review of 18 Argentine producers and/or exporters, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).³

On June 8, 2020, pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the antidumping duty order on biodiesel from Argentina for 18

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 18191 (April 1, 2020).

² The National Biodiesel Board Fair Trade Coalition is an association, composed of domestic producers of biodiesel. Coalition members include the National Biodiesel Board (NBB); American GreenFuels, LLC; Archer Daniels Midland Company; Ag Processing Inc.; Crimson Renewable Energy LP; High Plains Bioenergy; Integrity Biofuels, LLC; Iowa Renewable Energy, LLC; Lake Erie Biofuels dba HERO BX; Minnesota Soybean Processors; New Leaf Biofuel, LLC; Newport Biodiesel, L.L.C.; Renewable Biofuels, LLC; Renewable Energy Group, Inc.; Western Dubuque Biodiesel, LLC; Western Iowa Energy, LLC; and World Management Group LLC dba World Energy.

³ See Petitioner’s Letter, “Biodiesel from Argentina: Request for Administrative Review of Antidumping Duty Order,” dated April 30, 2020.

Argentine producers and/or exporters.⁴ On September 1, 2020, the petitioner timely withdrew its request for an administrative review for all 18 producers and/or exporters.⁵

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioner withdrew its request for review within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative review of the order on biodiesel from Argentina covering the April 1, 2019, through March 31, 2020 POR, in its entirety, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of biodiesel from Argentina. Antidumping duties shall be assessed at

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 35068 (June 8, 2020).

⁵ See Petitioner’s Letter, “Biodiesel from Argentina: Withdrawal of Request for Administrative Review of Antidumping Duty Order,” dated September 1, 2020.

rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to all 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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 18, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020-22430 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation: Rescission of 2017–2018 Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding an administrative review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement) for the period of review (POR) from October 1, 2017 through September 30, 2018. Commerce finalized an amendment to the Agreement, rendering the administrative review of the pre-existing Agreement moot.

DATES: Applicable October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jill Buckles, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0162 or (202) 482-6230, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, Commerce signed an agreement with the Russian Federation's Ministry for Atomic Energy (MINATOM), the predecessor to the State Atomic Energy Corporation Rosatom (ROSATOM), under section 734(l) of the Tariff Act of 1930, as amended (the Act), suspending the antidumping duty investigation on uranium from the Russian Federation.¹ The Agreement was amended five times from 1994 to 2008.² On February 22, 2019, Commerce formally opened

¹ See *Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220, 49235 (October 30, 1992).

² See *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994); *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996); *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997); and *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 73 FR 7705 (February 11, 2008).

consultations with ROSATOM with respect to a possible sixth amendment to extend the Agreement's term.³

On October 1, 2018, Commerce notified interested parties of the opportunity to request an administrative review of the Agreement.⁴ On October 11, 2018, domestic interested party Louisiana Energy Services LLC (LES) submitted a request for an administrative review of the Agreement.⁵ On December 11, 2018, Commerce published in the **Federal Register** a notice initiating an administrative review of the Agreement for the POR October 1, 2017 through September 30, 2018.⁶ On December 18, 2019, Commerce published in the **Federal Register** preliminary results of this administrative review and the postponement of the final results in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.214(h)(2).⁷ On June 17, 2020, Commerce issued post-preliminary results in this review.⁸

On October 5, 2020, Commerce and ROSATOM signed a final amendment to the Agreement.⁹ Commerce will also issue its final statutory memorandum and memorandum addressing comments regarding the amendment which provide detailed explanations regarding how the amended agreement meets its statutory requirements and how Commerce responds to additional comments from parties on the amendment.

³ See Letter to ROSATOM from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation," dated February 22, 2019.

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 49358 (October 1, 2018).

⁵ See Letter from LES, "Uranium from Russia: Request for Administrative Review," dated October 11, 2019.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018).

⁷ See *Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation: Preliminary Results of 2017–2018 Administrative Review and Postponement of Final Results*, 84 FR 69357 (December 18, 2019).

⁸ See Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, from Joseph A. Laroski Jr., Deputy Assistant Secretary for Policy and Negotiations, "Post-Preliminary Analysis Memorandum in the 2017–2018 Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation," dated June 17, 2020.

⁹ See Commerce Memorandum, "Placing the 2020 Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation on the Record," dated October 5, 2020.

Rescission of the Administrative Review

Because Commerce has finalized a new amendment revising the terms and conditions of the Agreement, the administrative review of the pre-existing Agreement for the October 1, 2017 through September 30, 2018 POR is now moot. The review pertains to a version of the Agreement that no longer exists. Accordingly, we are hereby rescinding this review.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: October 5, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-22432 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-943]

Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2019-2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on oil country tubular goods from the People's Republic of China (China) for the period May 1, 2019, through April 30, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Glenn T. Bass Jr., AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-8338.

Background

On May 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on oil country tubular goods from China for the period May 1, 2019, through April 30, 2020.¹ On May 29, 2020,

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity*

United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., IPSCO Tubulars Inc., Vallourec Star, L.P., and Welded Tube USA, Inc (the petitioners), filed a timely request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).² Pursuant to this request and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of 159 companies named by the petitioners in their request for review.³ On August 11, 2020, the petitioners timely withdrew their request for an administrative review with respect to all companies.⁴

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners, the only party to file a request for review, withdrew this request by the 90-day deadline. Accordingly, we are rescinding, in its entirety, the administrative review of the antidumping duty order on oil country tubular goods from China covering the period May 1, 2019, through April 30, 2020.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of oil country tubular goods from China. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under

to Request Administrative Review, 85 FR 25394 (May 1, 2020).

² See Letter from the petitioners, "Oil Country Tubular Goods from the People's Republic of China: Request for Administrative Review of Antidumping Duty Order," dated May 29, 2020.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020).

⁴ See Letter from the petitioners, "Oil Country Tubular Goods from the People's Republic of China: Withdrawal of Request for Administrative Review," dated August 11, 2020.

19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 5, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020-22434 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd. (Hyundai Steel), a producer/exporter of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea), received countervailable subsidies that are above *de minimis*. The period of review (POR) is January 1, 2017 through December 31, 2017.

DATES: Applicable October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Emily Halle, 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) 482-0176.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on December 12, 2019.¹ In addition, Commerce issued a post-preliminary determination related to an upstream subsidy allegation on electricity on March 11, 2020.²

On March 19, 2020, we postponed the final results of this review until June 9, 2020.³ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days, thereby extending the deadline for these final results until September 28, 2020.⁵ For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁶

Scope of the Order

The products covered by this order are hot-rolled steel flat products. For a complete description of the scope of the order, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' 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

¹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2017*, 84 FR 67927 (December 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Post-Preliminary Analysis Memorandum—Upstream Subsidy on Electricity," dated March 11, 2020.

³ See Memorandum, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review, 2017," dated March 19, 2020.

⁴ See Memorandum to the Record from Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁵ See Memorandum to the Record from Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews" dated July 21, 2020. All deadlines in this segment of the proceeding have been extended by an additional 60 days.

⁶ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea; 2017," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from interested parties and record information, we have made changes to the subsidy calculations for Hyundai Steel. For a discussion of these issues, see the Issues and Decision Memorandum.

Methodology

Commerce is conducting 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 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.⁷ For a full description of the methodology underlying our conclusions, see the Issues and Decision Memorandum.

In making these findings, Commerce relied, in part, on facts available, pursuant to sections 776(a) and (b) of the Act. For further information, see "Use of Facts Otherwise Available" in the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2017 through December 31, 2017 to be as follows:

Company	Subsidy rate (percent <i>ad valorem</i>)
Hyundai Steel Co., Ltd	0.51

Disclosure

Commerce will disclose the calculations performed for these final results within five days of the date of

⁷ 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.

publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rate

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by Hyundai Steel, entered or withdrawn from warehouse for consumption from January 1, 2017 through December 31, 2017, at the *ad valorem* rate listed above.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties, in the amount shown above, 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, CBP will continue to collect cash deposits of estimated countervailing duties 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.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an 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 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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: September 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Changes Since the *Preliminary Results*
- IV. Scope of the Order
- V. Period of Review
- VI. Subsidies Valuation Information
- VII. Use of Facts Otherwise Available
- VIII. Analysis of Programs
- IX. Discussion of Comments
 - Comment 1: Whether the Electricity for Less Than Adequate Remuneration Upstream Subsidy Allegation Confers a Benefit
 - Comment 2: Whether the Subsidy Rate for Industrial Technology Innovation Promotion Act Grants Was Improperly Calculated
 - Comment 3: Whether the Tax Programs Under the Restriction of Special Location Taxation Act and Restriction of Special Taxation Act Meet the Specificity Requirement
 - Comment 4: Whether the Trading of Demand Response Resources Program is Countervailable
 - Comment 5: Whether the Modal Shift Program Confers a Countervailable Benefit
 - Comment 6: Whether Commerce Correctly Measured the Benefit for Port Usage Rights at Incheon Harbor
 - Comment 7: Whether the Suncheon Harbor Usage Fee Exemptions Under the Harbor Act Are Countervailable
 - Comment 8: Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier and Received Countervailable Benefits
- X. Recommendation

[FR Doc. 2020-22433 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA472]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Gastineau Channel Historical Society Sentinel Island Moorage Float Project, Juneau, Alaska

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the Gastineau Channel Historical

Society (GCHS) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of seven species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Sentinel Island moorage float near Juneau, Alaska. The project has been delayed and none of the work covered in the initial IHA has been conducted. GCHS has requested re-issuance with new effective dates over the same period in 2021 (*i.e.*, July 15, 2021 through September 20, 2021). The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from July 15, 2021 through September 20, 2021.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to GCHS, the re-issued IHA, the original application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-sentinel-island-moorage-float-project-juneau-alaska>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 7-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or

stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On July 15, 2020, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Sentinel Island moorage float project (85 FR 42837). The effective dates of that IHA were July 15, 2020, through September 20, 2020. On September 14, 2020, GCHS informed NMFS that the project was delayed. None of the work identified in the initial IHA (*e.g.*, pile driving) has occurred. GCHS submitted a request for a new identical IHA that would be effective from July 15, 2021 through September 20, 2021, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of GCHS' construction project is to construct an access float to more easily access Sentinel Island. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical those described in the initial IHA. The

mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Minke whale (*Balaenoptera acutorostrata*), humpback whales (*Megaptera novaeangliae*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*), and killer whale (*Orcinus orca*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for GCHS' construction work (85 FR 42837), GCHS' application, the **Federal Register** notice of the proposed IHA (85 FR 18196; April 1, 2020), and all associated references and documents.

Determinations

GCHS will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2021 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) GCHS' activities will not have an unmitigable adverse impact on taking for subsistence purposes as subsistence harvest of harbor seals and other marine mammals

is rare in the area and local subsistence users have not expressed concern about this project.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Western DPS Steller sea lion (*Eumetopias jubatus*) and Mexico DPS of humpback whales (*Megaptera novaeangliae*), which are listed under the ESA. The NMFS Alaska Regional Office Protected Resources Division issued a Biological Opinion on June 25, 2020 under section 7 of the ESA, on the issuance of an IHA to GCHS under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of the above species, and is also not likely to destroy or adversely modify critical habitat of the above species.

Authorization

NMFS has issued an IHA to GCHS for in-water construction activities associated with the specified activity from July 15, 2021 through September 20, 2021. All previously described

mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: October 5, 2020.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2020-22407 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Final Evaluation Findings of State Coastal Programs and National Estuarine Research Reserves

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of final evaluation findings of state coastal programs and national estuarine research reserves. The NOAA Office for Coastal Management has completed review of the Coastal Zone Management Program evaluations for the states and territories of California, Commonwealth of the Northern Mariana Islands, Delaware, Georgia, Hawaii, Minnesota, Mississippi, Pennsylvania, Rhode Island, South Carolina, and Wisconsin. In addition, the NOAA Office for Coastal Management has completed review of the National Estuarine Research Reserve evaluations for Great Bay, Hudson River, Kachemak Bay, North Inlet-Winyah Bay, Old Woman Creek, and Rookery Bay, and Sapelo Island. Copies of these final evaluation findings may be downloaded at http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html or by submitting a written request to the person identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management at Carrie.Hall@noaa.gov or (240) 530-0730.

SUPPLEMENTARY INFORMATION: The states and territories were found to be implementing and enforcing their federally approved Coastal Zone Management Programs, addressing the national coastal management objectives identified in CZMA Section 303(2), and adhering to the programmatic terms of

their financial assistance awards. The reserves were found to be adhering to programmatic requirements of the National Estuarine Research Reserve System.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020-22460 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board (NSGAB); Public Meeting and Solicitation for Nominations for the National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of public meeting and notice of solicitation for nominations for the National Sea Grant Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program (NSGCP) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the NSGCP website at <http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx>. This notice also responds to the Sea Grant Program Improvement Act of 1976, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board. To apply for membership to the Board applicants should submit a current resume. A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. Nominations will be accepted by email (preferred) or U.S. mail (See Contact Information Section). NOAA is an equal opportunity employer.

DATES: The announced meeting is scheduled for Friday, November 13, 2020 from 1:00 p.m. to 5:00 p.m. Eastern Time. There is no due date for nominations, however the program

intends to begin reviewing applications to fill upcoming vacancies by January 31, 2021. Applications will be kept on file for consideration of any Board vacancy for a period of three years from January 31, 2021.

ADDRESSES: The meeting will be held virtually only. For more information and for virtual access see below in the **FOR FURTHER INFORMATION CONTACT** section. Nominations should be sent via email to Ms. Donna Brown, Donna.Brown@noaa.gov.

Status: The meeting will be open to public participation with a 15-minute public comment period on Friday, November 13, 2020, at 4:30 p.m. Eastern Time. (Check agenda using link in the Summary section to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Public written comments should be received by Ms. Donna Brown by Friday, October 30, 2020 to provide sufficient time for Board review. Public written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date. As this will be a virtual meeting, there is no physical address for the meeting and all public comments should be sent to the contact below.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, at Donna.Brown@noaa.gov. Phone Number: 301-734-1088.

Special Accommodations: The Board meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Friday, November 1, 2020.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the NSGCP with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Individuals Selected for Federal Advisory Committee Membership: Upon selection and agreement to serve on the National Sea Grant Advisory Board, you become a Special Government Employee (SGE) of the United States Government. According to 18 U.S.C.

202(a), an SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a full time or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Board must complete the following actions before they can be appointed as a Board member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting), and other applicable forms, both conducted through NOAA Workforce Management; and (b) Confidential Financial Disclosure Report as an SGE, you are required to file a Confidential Financial Disclosure Report annually to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Form at the following website: <https://oge.gov/web/oge.nsf/OGE%20Forms/60739EAC38F5697785258363005C02C9>.

Dated: September 21, 2020.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020-22427 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-KA-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA518]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that Exempted Fishing Permits to facilitate the use of fishing year 2020 and 2021 monkfish research set-aside days-at-sea warrant further consideration. This notice provides interested parties the opportunity to comment on the proposed Exempted Fishing Permits.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email:* NMFS.GAR.EFP@noaa.gov.

Include in the subject line "Comments on 2020 Monkfish RSA EFP."

FOR FURTHER INFORMATION CONTACT:

Laura Hansen, Fishery Management Specialist, 978–281–9225, Laura.Hansen@noaa.gov.

SUPPLEMENTARY INFORMATION: Exempted Fishing Permits (EFPs) that waive monkfish landing limits have been routinely approved since 2007 to increase operational efficiency and optimize research funds generated from the Monkfish Research Set-Aside (RSA) Program. These EFPs would facilitate compensation fishing in support of the projects funded under the 2020/2021 monkfish RSA competition. Consistent with previous years of the monkfish RSA program, these RSA compensation fishing EFPs would authorize an exemption for participating vessels from days-at-sea (DAS) landing limit restrictions in the Monkfish Northern and Southern Fishery Management Areas found at 50 CFR 648.94(b)(1) and (2). Vessels fishing under an RSA DAS would be allowed to harvest monkfish in excess of the usual landing limits associated with their Federal permits.

The Monkfish RSA Program is allocated 500 monkfish RSA DAS annually, as established by the New England and Mid-Atlantic Fishery Management Councils in Amendment 2 to the Monkfish FMP (70 FR 21929; April 28, 2005). These monkfish RSA DAS are awarded through a competitive grant program in support of monkfish research. Award recipients sell RSA DAS to fishermen to fund approved monkfish research projects. Award recipients receive an allocation of RSA DAS and a maximum amount that may be landed under available DAS. Projects are constrained to the total DAS, maximum available landing weight, or award timetable, whichever is reached first. To calculate a maximum weight allocation that is similar to the Councils' original intent to be harvested under the allocated 500 RSA DAS, NMFS uses twice the landing limit for Permit Category A and C monkfish vessel fishing in the Southern Fishery Management Area (4,074 lb [2 mt] whole weight) for each RSA DAS. Annually, a maximum of 2,037,000 lb (924 mt) of whole weight may be harvested across all Monkfish RSA projects. Allowing vessels an exemption from monkfish landing limits provides an incentive for vessels to purchase and fish under RSA DAS to catch more monkfish per trip, while constraining

each project to a maximum available harvest limit ensures that the overall monkfish RSA catch will not be an excessive burden on the fishery as a whole. Arizona State University (ASU) was awarded 400 DAS for 2020 and 399 DAS for 2021. The University of Delaware (UD) was awarded 100 DAS for 2020 and 101 DAS for 2021.

If approved, ASU and UD may request minor modifications and extensions to their EFPs throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–22397 Filed 10–8–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Management Plan for the Great Bay National Estuarine Research Reserve

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; approval of management plan.

SUMMARY: Notice is hereby given that the Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration approves the revised management plan for the Great Bay National Estuarine Research Reserve (Great Bay Reserve) in New Hampshire. In accordance with applicable federal regulations, the New Hampshire Fish and Game Department revised the Great Bay Reserve's management plan, which replaces the plan that was approved in 2007.

ADDRESSES: The approved management plan can be downloaded or viewed at <https://www.greatbay.org/wp-content/uploads/2020/06/ManagementPlan.pdf>. A hard copy of the documents may be requested by sending a written request

to the point of contact identified below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

Elizabeth Mountz of NOAA's Office for Coastal Management, by email at Elizabeth.Mountz@noaa.gov, phone at (240) 533–0819, or mail at: 1305 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

Pursuant to 15 CFR 921.33(c), a state must revise the management plan for a national estuarine research reserve at least every five years. Changes to a national estuarine research reserve's management plan may be made only after receiving written approval from NOAA. NOAA approves changes to management plans via notice in the **Federal Register**. On March 24, 2020, NOAA issued a notice in the **Federal Register** announcing a thirty-day public comment period for the proposed revision of the management plan for the Great Bay Reserve (85 FR 16618). Responses to written and oral comments NOAA received, and an explanation of how comments were incorporated into the final version of the revised management plan, are available in appendix 3 of the plan.

The management plan outlines the Great Bay Reserve's strategic goals and objectives; administrative structure; programs for conducting research and monitoring, education, and training; resource protection and restoration plans; public access and visitor use plans; consideration for future land acquisition; and facility development to support Great Bay Reserve operations. Since 2007, the Great Bay Reserve has implemented its core and system-wide programs; secured science, education, and conservation grants to serve Great Bay communities; made significant repairs and improvements to the Discovery Center campus including installing a pervious pavement parking lot, replacing the original boardwalk, and refurbishing staff offices in the Depot House and Discovery Center; updated exhibits in Discovery Center including designing and installing marine debris exhibits; and enhanced waterfront access for kayak launching. There will be no boundary change with the approval of the revised management plan. The revised management plan will serve as the guiding document for the 10,235-acre Great Bay Reserve for the next five years.

NOAA reviewed the environmental impacts of the revised management plan and determined that this action is categorically excluded from further analysis under the National Environmental Policy Act of 1969, 42

U.S.C. 4321 *et seq.*, consistent with NOAA Administrative Order 216–6A.

(Authority: 16 U.S.C. 1451 *et seq.*)

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–22461 Filed 10–8–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2020–0042]

Proposed Continuing Legal Education Guidelines

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: This request for comments seeks public input on proposed guidelines regarding continuing legal education (CLE). Pursuant to the final rule published on August 3, 2020, registered patent practitioners and individuals granted limited recognition to practice before the United States Patent and Trademark Office (USPTO or Office) in patent matters will be required to biennially submit a mandatory registration statement beginning on March 1, 2022. On the registration statement, practitioners may state whether they have completed 6 credits of CLE within the previous 24 months. The USPTO has prepared proposed CLE guidelines, attached to this request for comments as Appendix 1, which advise practitioners and providers as to the proposed types of CLE courses and activities that will qualify for USPTO CLE credit. In this request for comments, the Office seeks input on the proposed guidelines.

DATES: *Comment Deadline Date:* Written comments must be received on or before January 7, 2021.

ADDRESSES: Written comments should be sent by email addressed to CLEguidelines@uspto.gov. Comments may also be submitted by postal mail addressed to Mail Stop OED, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of William Covey, Director for the Office of Enrollment and Discipline, CLE Guidelines Request for Comments 2020.

Although comments may be submitted by postal mail, the Office prefers to receive comments by email to more easily share all comments with the

public. The Office prefers the comments to be submitted in plain text but also accepts comments submitted in portable document format or DOC format. Comments not submitted by email should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection at the Office of Enrollment and Discipline (OED), located in Madison West, Eighth Floor, 600 Dulany Street, Alexandria, VA 22314. Comments will also be available for viewing via the Office’s website (www.uspto.gov). Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: William Covey, OED Director, by telephone at 571–272–4097.

SUPPLEMENTARY INFORMATION:

Summary

In this request for comments, the Office seeks feedback and information regarding the proposed CLE guidelines attached as Appendix 1. The goal of the proposed guidelines is to clarify for registered practitioners and those granted limited recognition pursuant to 37 CFR 11.9(b) what types of CLE classes or activities will qualify for USPTO CLE credit. The guidelines also seek to establish a procedure for approving CLE courses that would qualify for USPTO CLE credit. Finally, the guidelines seek to establish the type of recognition practitioners will receive if they certify on their registration statements that they have completed 6 credits of CLE in the preceding 24 months.

Background

As set forth in the final rule, published on August 3, 2020 (85 FR 46932) beginning on March 1, 2022, active patent practitioners will be required to submit a biennial electronic registration statement. 37 CFR 11.11(a)(2). On the registration statement, practitioners may also certify that they have completed 6 credits of CLE within the preceding 24 months, with 5 of the credits in patent law and practice and 1 of the credits in ethics. 37 CFR 11.11(a)(3).

The Office recognizes that patent practitioners and CLE providers may seek more specific guidance as to how the USPTO will implement the CLE provisions. In order to assist patent practitioners and CLE providers in

determining what courses or activities enable a practitioner to make the CLE certification, the USPTO has prepared the attached proposed CLE guidelines. The proposed guidelines also address the form of recognition practitioners will receive when they make the CLE certification on their biennial registration statement.

Request for Public Comments

The Office seeks written public comments on the proposed CLE guidelines attached as Appendix 1 to this request.

The Office welcomes any comments from the public on the topics covered in this notice. The Office also poses specific questions below and invites public feedback on those questions.

Topic 1: Subject Matter of Courses Qualified for USPTO Patent CLE Credit

The proposed CLE guidelines provide that a practitioner may obtain USPTO patent CLE credit for a course that pertains to any topic listed in 37 CFR 11.5(b)(1), which defines practice in patent matters before the USPTO. Applicable topics include, but are not limited to: Preparation and prosecution of patent applications, determining and rendering opinions on patentability, and drafting documents to be presented in any patent-related proceeding before the USPTO, including proceedings before the Patent Trial and Appeal Board (PTAB). Accepted topics also include litigation that pertains to any of the topics listed in 37 CFR 11.5(b)(1).

As noted in the final rule, the purpose of the CLE certification and recognition is to incentivize practitioners to engage in CLE relevant to their practice before the Office. As explained in the NPRM, “Ideally, when practitioners are well-trained and well-educated in patent law and practice, higher quality applications are filed, prosecution is more efficient, and patent grants become stronger, more reliable, and more predictable.” 84 FR at 37415. Accordingly, the proposed CLE guidelines provide that patent CLE credit may only be obtained for courses that pertain directly to practice in patent matters before the USPTO.

The USPTO invites comment on the parameters to be used to determine what subject matters beyond those listed in 37 CFR 11.5(b)(1) would qualify for patent CLE credit, if any.

Topic 2: Other Activities That May Qualify for USPTO CLE Credit

The final rule states that patent practitioners may obtain up to two of the five credits in patent law and practice by participating in the USPTO Patent Pro Bono Program. *See* 37 CFR

11.11(a)(3)(ii). The final rule further provides that patent practitioners will earn one hour of USPTO patent CLE credit for every three hours of pro bono service. 37 CFR 11.8(a)(3)(ii).

The proposed CLE guidelines set forth certain other activities that may qualify for USPTO CLE credit, including service in a law school clinic participating in the USPTO Law School Clinic Certification Program. The proposed guidelines also limit the number of credit hours that a practitioner may claim related to such activities.

The USPTO invites comments on whether a practitioner may earn income and CLE credits simultaneously (for example, if a practitioner is paid for a speaking engagement on a CLE-eligible topic).

Topic 3: Providers of USPTO Patent CLE

The proposed CLE guidelines set forth eligible subject matter for USPTO patent CLE credit (that is, CLE courses provided by the USPTO) and explain that any course approved by a state bar for ethics credit may also be used for USPTO ethics CLE credit. However, the guidelines do not currently set forth a procedure by which providers may apply to the USPTO for approval of CLE courses for USPTO credit in patent law and practice and/or ethics.

The proposed CLE guidelines could provide a procedure for approval of courses by non-USPTO providers (that is, CLE courses offered by providers other than the USPTO). The USPTO invites comments regarding the merits of implementing such a procedure or suggestions concerning the specific method by which the USPTO could review and approve such courses.

Topic 4: Form of Recognition for Practitioners Who Certify Completion of CLE

The final rule provides that the OED Director may publish whether each registered practitioner or person granted limited recognition under 37 CFR 11.9 has certified that he or she has completed the 6 USPTO CLE credits in the past 24 months. 37 CFR 11.11(a)(1). The proposed CLE guidelines provide that such recognition will take the form of a statement on the practitioner's individual profile on the online practitioner database. The USPTO invites comments on what manner the recognition should take.

Questions Regarding the Proposed CLE Guidelines

As noted above, the Office welcomes any comments from the public on any portion of the proposed CLE guidelines.

The Office is particularly interested in the public's input on the following questions:

1. What course topics should qualify for USPTO patent CLE credit?
2. What parameters should be used to determine what subject matters beyond those listed in 37 CFR 11.5(b)(1) would qualify for patent CLE credit, if any?
3. What activities should qualify for USPTO CLE credit, either in patent law and practice or ethics?
4. Should organizations or providers outside the USPTO be authorized to deliver USPTO CLE courses? If so, how should such courses be approved?
5. In what manner should the USPTO recognize practitioners who make the CLE certification on their mandatory registration statement?
6. Are there any other issues or concerns that the USPTO should consider regarding the CLE guidelines? If so, what are they and how and why would they apply?

Dated: October 2, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Appendix 1

USPTO Proposed Continuing Legal Education Guidelines

The following USPTO CLE guidelines are intended to advise practitioners as to what types of courses or activities qualify for USPTO patent and ethics credit, how to calculate CLE credit for a given course or activity, and how providers may obtain approval of a CLE course for USPTO patent or ethics credit.

If practitioners have further questions regarding CLE that are not addressed in this document, they are encouraged to contact the OED at 571-272-4097 or oed@uspto.gov.

I. Voluntary CLE Certification

A. Certification for Active Registered Patent Practitioners and Persons Granted Limited Recognition Pursuant to 37 CFR 11.9

37 CFR 11.11(a)(2) provides that registered patent practitioners and persons granted limited recognition pursuant to 37 CFR 11.9(b) are required to biennially file a mandatory registration statement. On the statement, practitioners will state whether they have voluntarily completed 6 CLE credits within the 24 months preceding the filing of the registration statement (the reporting period). *See also* 37 CFR 11.11(a)(3)(i). Five of the six credits must be in patent law and practice, and one credit must be in ethics. 37 CFR 11.11(a)(3)(ii).

Persons who certify that they have completed six CLE credits as described above will be recognized in the USPTO's online practitioner database. Such recognition will consist of a notation on the practitioner's individual profile, which states, "This practitioner has certified completion of six

credits of continuing legal education within the previous 24 months."

No practitioner or person granted limited recognition pursuant to 37 CFR 11.9(b) is required by the USPTO or the OED to complete CLE credits. The OED notes that this recognition does not constitute endorsement of any particular practitioner or CLE.

B. Certification for Persons Newly Registered or Granted Limited Recognition

At the time an individual is newly registered to practice in patent matters before the USPTO or granted limited recognition pursuant to 37 CFR 11.9(b), he or she will submit a registration statement. In order to complete the registration statement, the practitioner shall state whether he or she has completed six credits of CLE within the applicable reporting period, consisting of five credits in patent law and practice and one credit in ethics.

Thereafter, the practitioner or individual granted limited recognition will be required to timely file biennial registration statements, which will include a voluntary CLE certification.

C. Calculation of CLE Credit Hours

Practitioners may earn 1 credit hour of CLE for every 50 minutes of instruction time or other accredited activity. Practitioners may not earn CLE credit in increments of less than 0.5 credit hours. Credit hours may be calculated based on the following examples:

- 0–24 minutes of instruction time or accredited activity = 0 CLE credit hours
- 25–49 minutes of instruction time or accredited activity = 0.5 CLE credit hours
- 50–74 minutes of instruction time or accredited activity = 1.0 CLE credit hours
- 75–99 minutes of instruction time or accredited activity = 1.5 CLE credit hours
- 100–124 minutes of instruction time or accredited activity = 2.0 CLE credit hours
- 125–149 minutes of instruction time or accredited activity = 2.5 CLE credit hours
- 150–174 minutes of instruction time or accredited activity = 3.0 CLE credit hours

Practitioners may not earn partial credit for attendance at a portion of a course or CLE session. Credit may only be earned by attending an entire CLE course or session.

D. Carry-Over of CLE Credits

Practitioners who earn more than six CLE credit hours in a reporting period are permitted to carry over up to three CLE credit hours from that reporting period to the next reporting period, up to two of which may be in patent law and practice and up to one of which may be in ethics.

II. Activities for Which USPTO CLE Credit May Be Earned

A. Attendance at CLE Courses Completed During a Reporting Period

Practitioners may earn CLE credit by attending a CLE course in either (1) patent law and practice or (2) ethics.

Practitioners may not earn CLE credit for repeating a course or program with identical content, in any format, even if the course or program is repeated in a different biennial registration period. Practitioners may earn CLE credit for completing an updated version of a course or program the practitioner previously completed.

1. CLE Courses in Patent Law and Practice

Practitioners may earn patent CLE credit by attending a CLE course on the topic of patent law and practice.

In general, courses designated for USPTO patent CLE credit will pertain to any of the topics listed in 37 CFR 11.5(b)(1), which defines practice in patent matters before the USPTO. Applicable topics include, but are not limited to:

- Preparation and prosecution of patent applications;
- Consulting with or giving advice to a client who is contemplating filing a patent application or other document with the Office, including considering the advisability of relying on alternative forms of protection that may be available;
- Drafting a specification of claims of a patent application;
- Drafting an amendment or response to an Office communication;
- Determining and rendering opinions on patentability;
- Drafting documents to be presented in any patent-related proceeding before the USPTO, including proceedings before the PTAB;
- Drafting an assignment of rights in an issued patent, patent application, or in contemplation of the filing of a patent application; and
- Litigation that pertains to the topics listed in 37 CFR 11.5(b)(1).

The USPTO offers numerous opportunities to earn patent CLE credit at no cost. USPTO CLE courses are listed on the USPTO website, which contains a schedule of upcoming courses and links to USPTO CLE courses that are available on demand.

2. CLE Courses in Ethics

Practitioners may obtain USPTO ethics CLE credit by attending a CLE course that is offered by the USPTO for ethics CLE credit. Practitioners may also obtain USPTO ethics CLE credit by attending a CLE course that has been approved by any state bar for ethics credit. In general, courses accepted for USPTO ethics CLE credit will pertain to a practitioner's obligations under the USPTO Rules of Professional Conduct, including a practitioner's obligations under such rules to clients; prospective clients; and/or the USPTO, courts, and other legal institutions.

B. Other Activities for Earning Credit During a Reporting Period

1. Participation in the USPTO Patent Pro Bono Program

Practitioners may earn up to two CLE credits in patent law and practice by participating in the USPTO Patent Pro Bono Program. Practitioners may earn one credit hour of CLE in patent law and practice for every three hours of service provided to a client through the USPTO Patent Pro Bono Program.

2. Participation in the USPTO Law School Clinic

Practitioners may earn up to two CLE credits in patent law and practice by taking part in a law school clinic that participates in the USPTO Law School Clinic Certification Program. Practitioners may earn one credit hour of CLE for every three hours of service in such a clinic.

3. Presenting or Preparing for a Course Approved for USPTO CLE Credit

Practitioners may earn up to two CLE credits in patent law and practice or up to one credit in ethics for either speaking at a USPTO-accredited CLE course or preparing written materials for such a CLE course (but not both). Credit for preparation will be awarded on the basis of time spent by a practitioner either (1) preparing written materials for use in the presentation of the course; or (2) preparing a presentation as an instructor or presenter for the course. The number of preparation minutes shall not exceed four times the number of instructional minutes in the presentation being prepared.

4. Writing

Practitioners may earn up to two CLE credits in patent law and practice or up to one credit in ethics for writing, as an author or co-author, materials published in the form of an article, chapter, or book that contributed substantially to the continuing legal education of the author or co-author and other practitioners, and that was not done as part of the practitioner's regular employment, as a service to the practitioner's clients, or as a marketing device for the practitioner or the practitioner's employer.

5. Teaching at an Accredited Law School

Practitioners may earn up to two CLE credits in patent law and practice or up to one credit in ethics for teaching, lecturing, or speaking on (1) legal ethics, or (2) patent law and practice, as defined in part VI(B) of these guidelines, in the position of a part-time faculty member in any law school accredited by the American Bar Association.

C. Non-Qualifying Activities

No CLE credit can be claimed for the following activities:

- Activity done in the ordinary course of practicing in patent matters before the USPTO, the performance of regular employment, or as volunteer service to clients, bar organizations, or the general public (except as noted above).
- Activity associated with membership in an organization, including committee meetings, business meetings, or work sessions.

- Legislative activities and/or lobbying.
- Reading or reviewing written materials outside the context of preparing to present a CLE program approved by the USPTO for CLE credit (or a course for which such approval has been sought).
- Solicitation of clients or other marketing or promotional activities.

III. Recordkeeping

It is recommended that practitioners who certify completion of CLE keep records that substantiate such completion for three previous reporting periods (*i.e.*, six years). Although there is no specific recordkeeping requirement, practitioners should be aware that the USPTO's OED may request that a practitioner supply documentation that substantiates his or her completion of CLE or "other activities." Practitioners are reminded that they have ethical obligations to be complete, accurate, and truthful in all of their representations to the USPTO. Consequently, practitioners may be subject to discipline under the USPTO Rules of Professional Conduct if their CLE certifications are false or misleading.

[FR Doc. 2020-22420 Filed 10-8-20; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* November 8, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603-2117, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On 8/21/2020 and 8/28/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the products and

services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

MR 10638—Carrot and Dip To Go, Includes Shipper 20638
 MR 10651—Saver, Lemon
 MR 10671—Celery and Dip To Go, Includes Shipper 20671
 MR 10744—Container, Snack, Pigout, Includes Shipper 20744
 MR 10767—Saver, Grapefruit, Includes Shipper 20767
 MR 11102—Bags, Roasting, Includes Shipper 21102

Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

Service(s)

Service Type: Laundry Service
Mandatory for: Health & Human Services Supply Center, Perry Point, MD
Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Administrative Services
Mandatory for: General Services Administration: 200 Chestnut Street, Philadelphia, PA

Source of Supply: Elwyn, Aston, PA
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS/R03 NORTH SERVICE CENTER

Service Type: Latrine Services
Mandatory for: Stryker National Logistics Center, Auburn, WA
Source of Supply: Skookum Educational Programs, Bremerton, WA

Contracting Activity: DEPT OF THE ARMY, W4GG HQ US ARMY TACOM

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Building: Main and Second, Joplin, MO

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–22388 Filed 10–8–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* November 8, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service(s)

Service Type: Custodial and Related Services

Mandatory for: GSA PBS Region 4, Josiah House Courthouse, Charleston, SC
Source of Supply: Palmetto Goodwill Services, North Charleston, SC

Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R4 TENNESSEE/KENTUCKY CONTRACTS

Deletions

The following products and services are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

8415–01–494–4607—Cover, Parachutists' and Ground Troops' Helmet, All Services, Snow Camouflage, XL
Source of Supply: Mount Rogers Community Services Board, Wytheville, VA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Janitorial/Minor Maintenance
Mandatory for: U.S. Post Office, Courthouse and Customs House, Key West, FL
Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL

Contracting Activity: PUBLIC BUILDINGS SERVICE, ACQUISITION DIVISION/SERVICES BRANCH

Service Type: Janitorial/Custodial
Mandatory for: U.S. Courthouse and Customhouse, St. Louis, MO
Source of Supply: MGI Services Corporation, St. Louis, MO

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Building: 1530 4th Street, Peru, IL

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance
Mandatory for: Rockville Post Office, Rockville, MD
Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD

Contracting Activity: PUBLIC BUILDINGS SERVICE, WPHBB—AGGREGATED REPAIR&ALTERATIONS CONTRACTS BRANCH

Service Type: Grounds Maintenance
Mandatory for: Consumer Product Safety Commission, Gaithersburg, MD

Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD

Contracting Activity: PUBLIC BUILDINGS SERVICE, WPHBB—AGGREGATED REPAIR&ALTERATIONS CONTRACTS BRANCH

Service Type: Grounds Maintenance
Mandatory for: Bureau of Alcohol, Tobacco and Firearms, Rockville, MD

Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD

Contracting Activity: PUBLIC BUILDINGS SERVICE, WPHBB—AGGREGATED

REPAIR&ALTERATIONS CONTRACTS
BRANCH

Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve Center: 70
Rochester Hill Road, Rochester, NH

Source of Supply: Northern New England
Employment Services, Portland, ME
Contracting Activity: DEPT OF THE ARMY,
W6QK ACC-PICA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Coast Guard: CGC Eagle
(WIX-327), New London, CT
Source of Supply: CW Resources, Inc., New
Britain, CT

Contracting Activity: U.S. COAST GUARD,
U.S. COAST GUARD

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 125
South Main Street, Muskogee, OK
Source of Supply: Golden Rule Industries of
Muskogee, Inc., Muskogee, OK

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Navy Exchange: Fort Adams,
Building 402, Newport, RI

Source of Supply: AccessPoint RI, Cranston,
RI

Contracting Activity: NEXCOM-Navy
Exchange Service Command

Service Type: Custodial Services
Mandatory for: Department of Homeland
Security: CBP—Pier One Ala Moana
Blvd., Honolulu, HI

Source of Supply: Lanakila Pacific, Honolulu,
HI

Contracting Activity: OFFICE OF
PROCUREMENT OPERATIONS, OFFICE
OF PROCUREMENT OPERATIONS

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building, Tulsa,
OK

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Custodial Services
Mandatory for: Customs and Border
Protection, Checkpoint 808, I-8
Westbound 70.2 Mile Marker,
Winterhaven, CA, Winterhaven, CA

Source of Supply: ARC-Imperial Valley, El
Centro, CA

Contracting Activity: U.S. CUSTOMS AND
BORDER PROTECTION, BORDER
ENFORCEMENT CONTRACTING
DIVISION

Service Type: Janitorial/Custodial
Mandatory for: Durward G. Hall Federal
Building and Courthouse: 302 Joplin
Street, Joplin, MO

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Document Destruction
Mandatory for: Department of Veterans
Affairs, Veterans Integrated Service
Network (VISN) 10, Kettering, OH,
Kettering, OH

Source of Supply: Greene, Inc., Xenia, OH
Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 552-DAYTON

Service Type: Administrative Services
Mandatory for: Fort McPherson, GA, HQ

USA FORSCOM DESLOG CD, Fort
McPherson, GA
Source of Supply: Bobby Dodd Institute, Inc.,
Atlanta, GA

Contracting Activity: DEPT OF THE ARMY,
W6QM MICC-FT GORDON

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building:
Building #4, Suitland, MD
Source of Supply: Davis Memorial Goodwill
Industries, Washington, DC

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve, Fort
Drum Units Home Station and Units
Home Vehicle Storage (Motor Pool), Fort
Drum, NY, Fort Drum, NY

Source of Supply: Jefferson County Chapter,
NYSARC, Watertown, NY

Contracting Activity: DEPT OF THE ARMY,
W6QK ACC-PICA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 123
Fourth Street, SW, Albuquerque, NM
Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and
Courthouse: 101 First Street SE, Cedar
Rapids, IA

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Customs Service, Seattle,
WA

Source of Supply: Northwest Center, Seattle,
WA

Contracting Activity: TREASURY,
DEPARTMENT OF THE, DEPT OF
TREAS/

Service Type: Facility Support Services
Mandatory for: U.S. Federal Building,
Courthouse and Post Office: 330
Shawnee Street, Leavenworth, KS

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Naval Sea Systems Command
(NAVSEA) Buildings 22.; 28, 104, 176,
197, 201, 213 and 214, Washington Navy
Yd, DC

Source of Supply: Melwood Horticultural
Training Center, Inc., Upper Marlboro,
MD

Contracting Activity: DEPT OF THE NAVY,
U S FLEET FORCES COMMAND

Service Type: Laundry Service
Mandatory for: Department of Veterans
Affairs, Wilmington VA Medical Center,
Wilmington, DE, Wilmington, DE

Source of Supply: Elwyn, Aston, PA
Contracting Activity: VETERANS AFFAIRS,
DEPARTMENT OF, 244-NETWORK
CONTRACT OFC 4 (00244)

Service Type: Grounds Maintenance
Mandatory for: Federal Center: 620 Central
Avenue, Alameda, CA

Source of Supply: Rubicon Programs, Inc.,
Richmond, CA

Contracting Activity: GENERAL SERVICES
ADMINISTRATION, FPDS AGENCY
COORDINATOR

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2020-22387 Filed 10-8-20; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Exchange Air Force Real Property for Non-Air Force Real Property

AGENCY: Air Force Civil Engineer
Center, Department of the Air Force,
DOD.

ACTION: Notice of intent.

SUMMARY: The Department of the Air
Force is publishing this notice to
identify federal real property that it
intends to exchange for property that is
needed by the Air Force to limit
encroachment and other constraints on
military operations at Buckley AFB, CO.
DATES: Written objections must be filed
no later than fifteen (15) calendar days
after the date of publication of this
Notice.

ADDRESSES: Submit written objections to
the Air Force Materiel Command Law
Office, AFMCLO/JAZ, 2240 B Street,
Room 260, Wright-Patterson AFB, OH
45433-7109; Facsimile: (937) 255-3733;
or Email: afmclo.jaz.tech@us.af.mil.
Include Docket No. AFD-1620 in the
subject line of the message.

FOR FURTHER INFORMATION CONTACT: Mr.
Jason Rose, Air Force Civil Engineer
Center (AFCEC/CIUB), 2261 Hughes
Avenue, Suite 155, Joint Base San
Antonio (JBSA) Lackland, TX 78236-
9853; telephone (210) 395-9516.

SUPPLEMENTARY INFORMATION: The
Department of the Air Force will agree
to convey 8.4 acres (parcel ID#
131345537) in fee with a nominal value
(\$0) to The City of Aurora, Colorado, the
Recipient, in exchange for 10.5 acres
(parcel ID# 033796888) in fee, also with
a nominal value (\$0). The U.S. Army
Corps of Engineers (USACE) appraisal
in accordance with Uniform Standards
of Professional Appraisal Practice and
Uniform Appraisal Standards for
Federal Land Acquisitions concluded
each parcel had a nominal or zero value
because both parcels have restricted
uses. The restriction on the 8.4 acres is
a roadway easement. The restriction on
the 10.5 acres located in a clear zone,
has covenant which states, “no building
or any other structure shall at any time
be erected on the property” covenant in

order to comply with airfield safety regulations. As such, the appraisals indicated both parcels have no economic use in a competitive marketplace and therefore worth a nominal or “zero” monetary value. The restrictions will stay in place after the land exchange in order to serve both parties future interests with regard to the usage of the land.

On September 18, 2020, the Air Force notified the appropriate Congressional committees of the terms and conditions of the proposed exchange pursuant to 10 U.S.C. 2869(d)(2).

Authority: 10 U.S.C. 2869(d)(1) and 10 U.S.C. 2684a(d)(4)(B)

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020-22359 Filed 10-8-20; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement Addressing Heat and Electrical Upgrades at Fort Wainwright, Alaska

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Draft Environmental Impact Statement (EIS) as part of the environmental planning process to address heat and electrical upgrades at Fort Wainwright, Alaska. The current condition of the heat and power plant, one of the oldest coal-fired central heat and power plants (CHPP) in the United States, and its aging heat distribution system requires an upgrade to provide reliable heat and electrical infrastructure for the installation that resolves safety, resiliency, fiscal, and regulatory concerns. The Draft EIS evaluates reasonable alternatives, potential environmental impacts, and key issues of concern. A preferred alternative is not identified at this time. Comments received on the Draft EIS will be fully considered prior to determining which alternative would be the Army’s preferred alternative, a preference that will be identified when the Final EIS is published.

DATES: Comments must be received by December 8, 2020 to be considered in the preparation of the Final EIS.

ADDRESSES: Please submit written comments to Laura Sample, NEPA Program Manager at: Directorate of Public Works, ATTN: IMFW-PWE (L. Sample), 1046 Marks Road #4500, Fort

Wainwright, AK 99703-4500, email: usarmy.wainwright.id-pacific.mbx.heueis@mail.mil.

FOR FURTHER INFORMATION CONTACT:

Please contact Grant Sattler, Public Affairs Office, IMPC-FWA-PAO (Sattler), 1060 Gaffney Road #5900, Fort Wainwright, AK 99703-5900; telephone (907) 353-6701; email: alan.g.sattler.civ@mail.mil.

SUPPLEMENTARY INFORMATION: Fort Wainwright, Alaska is located in the interior of Alaska in the Fairbanks North Star Borough, and is home to the U.S. Army Garrison (USAG) Alaska and units of United States Army Alaska (USARAK). The soldiers, families, and civilians that make up the Fort Wainwright population are reliant upon a 65-year old coal-fired CHPP and an antiquated heat distribution system to heat and power more than 400 facilities. The CHPP is one of the oldest operational coal-fired power plants in the United States and is operating beyond the average design life of similar facilities. Constructing upgraded heat and electrical infrastructure would reduce utility costs, minimize the risk of a catastrophic failure, help safeguard mission readiness, meet energy efficiency standards, be compliant with emissions standards, and conform to Army-directed energy security criteria.

The Army identified three reasonable Action Alternatives that would meet the purpose of and need for the Proposed Action. Alternatives considered in the Draft EIS, including a No Action Alternative, are (1) construction of a new coal-fired CHPP, (2) construction of a new dual-fuel combustion turbine generator CHPP that would be primarily fueled by natural gas, and (3) decentralization of heat and power in which heat would be provided by distributed natural gas boilers installed at facilities across the installation and electricity would be purchased from a local utility provider.

The Draft EIS evaluates the potential direct, indirect, and cumulative environmental and socioeconomic impacts of these alternatives. Adverse impacts would be minimized to the extent possible through implementation of the avoidance, minimization, and mitigation measures.

Resource areas analyzed in the Draft EIS include: Air quality, utilities, hazardous and toxic materials and wastes, socioeconomic, environmental justice, noise, land use, transportation and traffic, human health and safety, geology and soil resources, water resources, cultural resources, and airspace.

Unavoidable environmental impacts would result from implementation of the Proposed Action. Significant, adverse impacts would be anticipated for socioeconomic (Alternatives 2 and 3, reduced coal demand), environmental justice (Alternatives 2 and 3, reduced coal demand), and cultural resources (Alternative 3, utilidor upgrades in Ladd Field National Historic Landmark). Less than significant, adverse impacts include increases in water turbidity; disturbance of sediments; noise from construction; localized habitat degradation; soil disturbance and erosion; stormwater runoff into surface water; and increased traffic, air emissions, and noise associated with construction vehicles and activities. Beneficial impacts would be anticipated for utilities (increased heating efficiency and improved system reliability). Under the No Action alternative, significant, adverse impacts would be anticipated for utilities, environmental justice, and human health and safety due to continued risk of plant failure.

Federal, state, and local agencies; Alaska Natives; Native Americans; Native American organizations and tribes; private organizations; and the public are invited to be involved in this EIS process by providing verbal or written comments. An online open house is available at <https://home.army.mil/alaska/index.php/fort-wainwright/NEPA/HEU-EIS> and a virtual public meeting will be announced locally. The date and time of the virtual public participation will be announced via Fairbanks and Healy, Alaska local news media and on digital platforms. Holding the public comment meeting virtually is required because of COVID-19 safety concerns.

An electronic copy of the Draft EIS is available online at: <https://home.army.mil/alaska/index.php/fort-wainwright/NEPA/HEU-EIS>. Copies of the Draft EIS will be available for review at the Noel Wien Library, 1215 Cowles Street, Fairbanks, AK 99701; the Post Library, Building 3700, Santiago Avenue, Fort Wainwright, AK 99703; and the Tri-Valley Community Library, 400 Suntrana Road, Healy, AK 99743, if these facilities are open. Copies of the Draft EIS are also available by submitting a request to: See **ADDRESSES**. Written comments must be sent within December 8, 2020. The Department of the Army will consider all comments received on the Draft EIS when preparing the Final EIS. As with the Draft EIS, the Department of the Army

will announce the availability of the Final EIS.

James W. Satterwhite Jr.,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 2020-22368 Filed 10-8-20; 8:45 am]

BILLING CODE 5061-AP-P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement for Clinton District Area Development, U.S. Army Garrison West Point, New York

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), the Department of the Army (Army) announces its intent to conduct public scoping to gather information to prepare an Environmental Impact Statement (EIS) for implementing the Clinton District Area Development Plan (Clinton District ADP) at U.S. Army Garrison West Point (USAG West Point), New York. USAG West Point is home to the U.S. Military Academy (USMA), the U.S. Army's preeminent leader development institution. The EIS will evaluate the environmental impacts from implementing the Clinton District ADP.

DATES: Comments must be received by November 23, 2020.

ADDRESSES: Please send written comments about the scope of the EIS and questions concerning the proposed action to: Mr. Christopher Pray, U.S. Army Garrison, West Point, NEPA Coordinator, P.O. Box 102, West Point, NY 10996. Comments may also be provided via email to: WestpointClinton-ADPEIS@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Pray, U.S. Army Garrison West Point, NEPA Coordinator, IMML-PWE, Building 667, Ruger Road, West Point, NY 10996, Christopher Pray at (845) 938-7122 or by email at Christopher.c.pray.civ@mail.mil.

SUPPLEMENTARY INFORMATION: The purpose and need for the proposed action (implementation of the Clinton District ADP) is to provide improvements and effective long-term management of installation facilities and infrastructure within the Clinton District so that USMA can continue to

improve its offerings to meet evolving educational standards concurrent with its goal of training its Corps of Cadets as future leaders in the defense of the nation and its core values. These improvements are necessary to satisfy these high standards while maintaining the visual character of the historic landscape in and around USAG West Point. The Clinton District comprises the main campus of USMA, and this ADP is one of seven separate ADPs in the USAG West Point Real Property Master Plan (RPMP), which addresses the effective long-term management of installation facilities and infrastructure through a comprehensive and collaborative planning process. The Clinton District is the most sensitive area at USAG West Point due to its location within the USMA National Historic Landmark District, and it encompasses historic buildings and structures, archeological sites, and historic landscapes. The Clinton District ADP is a critical component of the RPMP because it is home to USMA's academic core. It contains the majority of the academic, athletic, and waterfront areas, and includes such prominent sites as Trophy Point, West Point Cemetery, Eisenhower Hall, and The Plain.

The implementation of the projects proposed in the ADP would allow improvements and effective long-term management of installation facilities and infrastructure within the Clinton District. USMA needs to continue improving its infrastructure while observing the constraints of its physical location and protecting its cultural and natural resources. The ADP analyses several projects that are to be built, renovated, or reorganized to meet the needs of providing modern structures for the training of its Corps of Cadets as future leaders.

The Clinton District ADP includes the short-, mid-, and long-range components of development. It reflects ongoing projects previously considered under NEPA as well as potential future development opportunities at USAG West Point. These components are at different developmental stages with some under way and others at the conceptual level. One of the short-range components is the proposed construction and operation of the Humanities Center at Trophy Point. The EIS will consider the implementation of the Clinton District ADP relative to the various components, depending on their developmental stages. Components that are further along in development such as the Humanities Center will be evaluated in detail while components at conceptual stages will be evaluated at a

programmatic level in the EIS. For those potential future development opportunities evaluated in the EIS at a programmatic level, the Army will ensure that appropriate NEPA review is completed at the time when the components reach the stage ripe for specific decision-making.

The EIS will analyze the alternatives of full implementation of proposed projects in the Clinton District ADP, implementation of the Clinton District ADP without the revitalization of Trophy Point and the Humanities Center, and a No Action Alternative. The EIS will also evaluate the effects of the proposed action and past, present, and reasonably foreseeable future actions. There may be significant impacts to historic properties, including the visual historic component. Other potential impacts may occur on land use, biological aspects, and water resources. Construction activities may cause traffic, noise, and air quality impacts. Consultation with the State Historic Preservation Office will be required. Permitting actions for construction, air emissions, and storm water pollution prevention may be required.

A tentative schedule has been developed for this EIS. The scoping meeting is anticipated to be held in October of 2020. The Draft EIS and subsequent public meeting will occur in the summer of 2021. The Final EIS is anticipated to be solicited in October of 2022 with the Record of Decision to be issued in November of 2022. The EIS is estimated to be signed and completed in December of 2022.

Native American Tribes; Federal, state, and local agencies; organizations; special interest groups; and individuals are invited to be involved in the scoping process for the preparation of this EIS by participating in the scoping meetings and/or submitting written comments to assist with identifying alternatives or providing information to inform the analysis. Due to the COVID-19 Pandemic and the need to maintain social distancing, all public meeting materials will be provided online, and the public meeting will be hosted by telephone. The meeting materials can be found at <https://www.nan.usace.army.mil/Missions/Environmental/Environmental-Assessment/Clinton-Area-Development-Plan/>. Interested parties will also be invited to attend two public telephone meetings scheduled for October 29, 2020. The phone number and passcode for both meetings is 1-877-229-8493 and 119890. The first meeting will be from 2:00 p.m. to 4:00 p.m., and the second meeting will be from 6:00 p.m.

to 8:00 p.m. If you cannot access the scoping materials online, please submit a request for the scoping materials to: Mr. Chris Pray, U.S. Army Garrison West Point, NEPA Coordinator, by phone (845) 938-7122 or mail P.O. Box 102, West Point, NY 10996. Mail must be postmarked not later than October 26, 2020 so the meeting materials can be sent by United States Postal Service. Written comments must be received within 45 days of publication in the **Federal Register** and can be mailed to see **ADDRESSES** or emailed to: WestpointClinton-ADPEIS@usace.army.mil. Notification of the public telephone meetings will be announced in the local news media and on the US Army Corps of Engineers New York District website at: <https://www.nan.usace.army.mil/Missions/Environmental/Environmental-Assessment/Clinton-Area-Development-Plan/>.

James W. Satterwhite Jr.,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 2020-22369 Filed 10-8-20; 8:45 am]

BILLING CODE 5061-AP-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2020-SCC-0162]

Agency Information Collection Activities; Comment Request; State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A

AGENCY: Office of Elementary and Secondary Education, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without changes of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 8, 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-0159. 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 6W208D, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, (202) 205-1645.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Educational Agency and Local Educational Agency—School Data Collection and Reporting under ESEA, Title I, Part A.

OMB Control Number: 1810-0622.

Type of Review: Extension without changes of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 2,080.

Abstract: Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), State Educational Agencies (SEAs) must adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data, and to reserve funds for school improvement, State administration, and the State academic achievement awards program. This control number covers only the burden associated with the actual procedures an SEA must follow when adjusting ED-determined LEA allocations.

Dated: October 6, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-22386 Filed 10-8-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Membership of the Performance Review Board

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary publishes a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department.

DATES: October 9, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Geldhof, Director, Executive Resources Division, Office of Human Resources, Office of Finance and Operations, U.S. Department of Education, 400 Maryland Avenue SW, Room 210-00, LBJ, Washington, DC 20202-4573. Telephone: (202) 580-9669. Email: Jennifer.Geldhof@ed.gov.

If you use a telecommunications device for the deaf (TDD), or text telephone (TTY), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Membership

Under the Civil Service Reform Act of 1978, Public Law 95-454 (5 U.S.C.

4314(c)(4)), we must publish in the **Federal Register** a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department. The following persons may be named to serve on the Performance Review Board:

ASHLEY, CAROL ROSE
 BAILEY, NATHAN ADAM
 BATTLE, SANDRA G.
 BENJAMIN, NATHANIEL
 BRINTON, JEDEDIAH GRANT
 BYRD-JOHNSON, LINDA E.
 CANTRELL, DAVID
 CARR, PEGGY G.
 CARTER, DENISE L.
 CHANG, LISA E.
 CHAPMAN, CHRISTOPHER D.
 CORDES, WILLIAM D.
 CUMMINGS, ANTHONY
 CURRELL, DANIEL GLEN
 DOONE, ALISON
 EITEL, ROBERT S.
 ELIADIS, PAMELA D.
 ELLIS, KATHRYN A.
 FORBES, JORDAN REBEKKAH
 FORTELNY, GREGORY P.
 GARCIA, DANIELA ROSA
 GOODRIDGE-KEILLER, MARCEL
 GRAY, JASON
 HAIRFIELD, JAMES M.
 HARRIS, ANTONIA T.
 HERNANDEZ, STEVEN G.
 HILL, ELIZABETH CAROL MAI
 JACKSON, CANDICE
 JONES, DIANE AUER
 JUENGST, PHILLIP RYAN
 KARVONIDES, MARIA
 KEAN, LARRY G.
 KIM, ANN H.
 KOEPPPEL, DENNIS P.
 LOPEZ, LUIS RONALDO
 LUCAS, RICHARD J.
 MAHAFFIE, LYNN B.
 MALAWER, HILARY EVE
 MAUNEY, LOUIS A.
 MCCAGHREN, CHRISTOPHER JA
 MCDONALD, WALTER C.
 MCELWAIN, LORENA OROZCO
 MCHUGH, ERIN LYNN
 MCLAUGHLIN, MAUREEN A.
 MEFFORD, PENNY
 MILLER, DANIEL J.
 PERKINS, HILLARY M.
 RICHEY, KIMBERLY M.
 RIDDLE, PAUL N.
 RINKUS, CHRISTOPHER
 ROSENFELT, PHILIP H.
 RUBINSTEIN, REED
 RYDER, RUTH E.
 SACKS, CASEY KATHERINE
 SAFIR, ADAM GEORGE
 SANTY, ROSS C. JR.
 SANZENBACHER, ANDREW T.
 SASSER, TRACEY L.
 SCOTT, JANET DANIELS
 SIMMONS, LEE DOUGLASS RUS
 SIMPSON, DANIEL J.
 SMITH, RICHARD L.
 ST PIERRE, TRACEY
 STANTON, CRAIG A.
 TALBERT, KENT D.
 THOMPSON, FARNAZ FARKISH

TRACHMAN, WILLIAM EDWARD
 VANDERPLOEG, LAURIE
 VIANA, AIMEE POLANCO
 WASHINGTON, MARK
 WILLS, RANDOLPH E.
 WOOD, GARY H.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc), to the extent reasonably practicable.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Betsy DeVos,
Secretary of Education.

[FR Doc. 2020-22367 Filed 10-8-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Office of Energy Efficiency & Renewable Energy's Medium- and Heavy-Duty Truck Research and Development Activities & SuperTruck Initiative

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for Information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number DE-FOA-0002372 regarding the Office of Energy Efficiency & Renewable Energy's (EERE) Medium- and Heavy-Duty Truck Research and Development Activities & SuperTruck Initiative. The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on issues related to

medium and heavy-duty freight trucking. EERE is specifically interested in information on safe, efficient, affordable solutions that reduce energy use, emissions and total cost of ownership (purchase, fuel, maintenance and operational cost) for medium and heavy duty trucking. This request for information will help to inform the discussion topics during a public workshop EERE is planning for the December 2020 timeframe to identify gaps and barriers to commercializing new technologies, and help inform DOE's R&D and competitive funding strategy into the next ten years.

DATES: Responses to the RFI must be received by November 9, 2020.

ADDRESSES: Interested parties are to submit comments electronically to VTO@ee.doe.gov. Include "Medium and Heavy Duty Truck R&D Activities and SuperTruck Initiative RFI" in the subject line of the email. Responses must be provided as attachments to an email. Only electronic responses will be accepted. The complete RFI document is located at <https://eere-exchange.energy.gov/>.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to VTO@ee.doe.gov or to Kenneth Howden at 202-586-3631. Further instruction can be found in the RFI document posted on EERE Exchange at <https://eere-exchange.energy.gov/>.

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on issues related to medium and heavy-duty freight trucking. EERE is specifically interested in information on safe, efficient, affordable solutions that reduce energy use, emissions and total cost of ownership (purchase, fuel, maintenance and operational cost) for medium and heavy duty trucking. This request for information will help to inform the discussion topics during a public workshop DOE is planning for the December 2020 timeframe to identify gaps and barriers to commercializing new technologies, and help inform DOE's R&D and competitive funding strategy into the next ten years. Feedback is requested in the following categories outlined in the RFI: (1) Freight Operational Efficiency and Systems, (2) Internal Combustion Engine, Powertrain, Fuels, and Emissions Control, (3) Batteries, Electrification, and Charging of MD/HD Trucks, (4) Hydrogen and Fuel Cell Trucking, and (5) Other important considerations. Specific questions can

be found in the RFI. The RFI is available at: <https://eere-exchange.energy.gov/>.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on October 5, 2020, by David Howell, Acting Director, Vehicle Technologies Office, Office of Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 6, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–22421 Filed 10–8–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–2–000]

Public Citizen, Inc. and Citizens Action Coalition v. CenterPoint Energy, Inc. and Its Wholly-Owned Affiliate Southern Indiana Gas and Electric Company; Notice of Complaint

Take notice that on October 5, 2020, pursuant to sections 306, and 309 of the Federal Power Act, 16 U.S.C. 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Public

Citizen, Inc. and Citizens Action Coalition (Complainants) filed a formal complaint against CenterPoint Energy, Inc. (Respondent), alleging that the Respondent failed to report a change in status of its market-based rate authority seller, Southern Indiana Gas and Electric Company, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission’s list of Corporate Officials.

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. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov, or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 26, 2020.

Dated: October 5, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–22415 Filed 10–8–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP20–530–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Application for Authorization of Abandonment for Rate Schedules X–70 and X–233 of Southern Natural Gas Company, L.L.C.

Filed Date: 9/29/20.

Accession Number: 20200929–5101.

Comments Due: 5 p.m. ET 10/20/20.

Docket Numbers: RP21–33–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing:

Summary of Negotiated Rate Capacity Release Agreements on 10–2–20 to be effective 10/1/2020.

Filed Date: 10/2/20.

Accession Number: 20201002–5009.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: RP21–34–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Request for Limited Waiver of Transcontinental Gas Pipe Line Company, LLC under RP21–34.

Filed Date: 10/1/20.

Accession Number: 20201001–5329.

Comments Due: 5 p.m. ET 10/13/20.

Docket Numbers: RP21–35–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Aethon United 52454 to Scona 53157) to be effective 10/1/2020.

Filed Date: 10/2/20.

Accession Number: 20201002–5102.

Comments Due: 5 p.m. ET 10/14/20.

Docket Numbers: RP21–36–000.

Applicants: ANR Pipeline Company, Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC.

Description: Joint Petition for Limited Waiver, et al. of ANR Pipeline Company, et al. under RP21–36.

Filed Date: 10/2/20.

Accession Number: 20201002–5198.

Comments Due: 5 p.m. ET 10/14/20.

The filings are accessible in the Commission’s eLibrary system (<https://elibrary.ferc.gov/idmws/search/>)

fercgensearch.asp) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-22451 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Refund Report

	Docket Nos.
Marion County Solar Farm I LLC	EL20-6-000.
Marion County Solar Farm II LLC.	QF20-83-000.
Taylor County Solar LLC	QF20-84-000.
Plum Solar Farm	QF20-85-000.
Stillmore Solar Farm LLC	QF20-86-000.
Taylor Solar LLC	QF20-87-000.
Fulton Mill Solar Farm LLC	QF20-88-000.
Cook Solar LLC	QF20-89-000.
	QF20-90-000.
	QF20-91-000.
	QF20-92-000.
	QF20-93-000.
	QF20-94-000.
	QF20-95-000.
	QF20-96-000.
	QF20-97-000.
	QF20-98-000.
	QF20-99-000.
	QF20-100-000.
	QF20-101-000.
	QF20-102-000.
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	QF20-117-000.
	QF20-118-000.
	QF20-119-000.
	QF20-120-000.
	QF20-121-000.

	Docket Nos.
	QF20-122-000.
	QF20-123-000.
	QF20-124-000.
	QF20-125-000.
	QF20-126-000.

Take notice that on October 2, 2020, Marion County Solar Farm I LLC, Marion County Solar Farm II LLC, Taylor County Solar LLC, Plum Solar Farm LLC, Stillmore Solar Farm LLC, Taylor Solar LLC, Fulton Mill Solar Farm LLC, Cook Solar LLC, (jointly, Petitioners), submitted a Refund Report associated with a number of small qualifying facilities pursuant to the Federal Energy Regulatory Commission's August 20, 2020 Order.¹

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 Petitioners.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the

¹ *Marion County Solar Farm I LLC, et al.*, 172 FERC 61,154 (2020).

President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Comment Date: 5:00 p.m. Eastern time on October 23, 2020.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-22445 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20-3036-000]

Vopak Industrial Infrastructure Americas Plaquemine, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Vopak Industrial Infrastructure Americas Plaquemine, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-22446 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6299-014]

Dakota County, Minnesota; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Lake Bylesby Hydroelectric Project, located on the Cannon River in Dakota and Goodhue counties, Minnesota, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy any federal lands.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal

action that would significantly affect the quality of the human environment.

In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., amendment application and EA) via the internet through the Commission's Home Page (<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 (P-6299). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19) issued by the President on March 13, 2020. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3673 or (202) 502-8659 (TTY).

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file 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.

For further information, contact Alicia Burtner at (202) 502-8038.

Dated: October 5, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-22414 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-6-000]

Muscle Shoals Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Muscle Shoals Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last

three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-22450 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-9-000]

Henrietta D Energy Storage LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Henrietta D Energy Storage LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-22449 Filed 10-8-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20-3037-000]

Vopak Industrial Infrastructure Americas; St. Charles, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Vopak Industrial Infrastructure Americas St. Charles, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-22448 Filed 10-8-20; 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 corporate filings:

Docket Numbers: EC21–4–000.

Applicants: RE Slate 1 LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of RE Slate 1 LLC.

Filed Date: 10/2/20.

Accession Number: 20201002–5225.

Comments Due: 5 p.m. ET 10/23/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1900–004.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: Correction to Order No. 845 Second Compliance Filing to be effective 5/20/2019.

Filed Date: 10/2/20.

Accession Number: 20201002–5155.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER19–1902–004.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Compliance filing: Correction to ER19–1902 Second Compliance Filing to be effective 5/20/2019.

Filed Date: 10/2/20.

Accession Number: 20201002–5189.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER20–1837–003.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, Duke Energy Florida, LLC.

Description: Compliance filing: Errata to Second Amendent to Order N. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 10/2/20.

Accession Number: 20201002–5154.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER20–3009–001.

Applicants: GridLiance Heartland LLC.

Description: Compliance filing: GLH Order No. 864 Amended Compliance Filing to be effective 12/1/2020.

Filed Date: 10/2/20.

Accession Number: 20201002–5116.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER20–3012–001.

Applicants: GridLiance Heartland LLC.

Description: Compliance filing: ER20–3012 Order 845 Amended Compliance Filing to be effective 12/1/2020.

Filed Date: 10/2/20.

Accession Number: 20201002–5118.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER21–25–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Annual Calculation of the Cost of New Entry value (“CONE”) for each Local Resource Zone (“LRZ”) in the MISO Region of Midcontinent Independent System Operator, Inc.

Filed Date: 10/2/20.

Accession Number: 20201002–5202.

Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER21–26–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Notice of Cancellation of Rate Schedule FERC No. 281 to be effective 5/7/2020.

Filed Date: 10/5/20.

Accession Number: 20201005–5056.

Comments Due: 5 p.m. ET 10/26/20.

Docket Numbers: ER21–27–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–10–05_De Minimis Thresholds for Corrective Resettlements Filing to be effective 12/8/2020.

Filed Date: 10/5/20.

Accession Number: 20201005–5057.

Comments Due: 5 p.m. ET 10/26/20.

Docket Numbers: ER21–28–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Joint filing re: SGIA among NYISO, NYSEG and SunEast Dog Corners Solar LLC to be effective 9/21/2020.

Filed Date: 10/5/20.

Accession Number: 20201005–5089.

Comments Due: 5 p.m. ET 10/26/20.

The filings are accessible in the Commission’s eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by 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: October 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22444 Filed 10–8–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0690; FRL 10015–59–OAR]

Proposed Information Collection Request; Comment Request; EPA’s Light-Duty In-Use Vehicle Testing Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), “EPA’s Light-Duty In-Use Vehicle Testing Program (Renewal); (EPA ICR No. 0222.12, OMB Control No. 2060–0086)” to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 8, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0690, online using www.regulations.gov (our preferred method), by email to sohacki.lynn@epa.gov, or by mail to: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor,

Michigan 48105; telephone number: 734-214-4851; fax number: 734-214-4869; email address: sohacki.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA has an ongoing program to evaluate the emissions performance of light-duty motor vehicles (i.e., passenger cars and light trucks) after they have been introduced into commerce. This program, known as EPA's "in-use" program, operates in conjunction with other motor vehicle emissions testing programs conducted by the Agency and the light-duty motor vehicle manufacturers. These other test programs include confirmatory certification testing of prototype vehicles by manufacturers and EPA and the mandatory manufacturer in-use verification program (IUVP.) The Clean Air Act directs EPA to ensure that motor vehicles comply with emissions requirements throughout their useful

lives. The primary purpose of EPA's in-use program is information gathering. Nevertheless, EPA can require a recall if it receives information, from whatever source, including in-use testing, that a "substantial number" of any class or category of vehicles or engines, although properly maintained and used, do not conform to the emission standards, when in actual use throughout their useful life.

The EPA in-use program can be broken down into three closely related components. The first component involves the selection of classes of passenger cars and light trucks, totaling approximately 119 vehicles, for surveillance testing at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL). In some cases, surveillance testing may be followed by confirmatory testing to develop additional information related to test failures observed in a class during surveillance testing. Confirmatory testing involves the selection of approximately 10 passenger cars and light trucks per class, averaging approximately 8 vehicles per year, for further testing at EPA's NVFEL. Confirmatory testing differs from surveillance testing in that the vehicles must meet stricter maintenance and use criteria. However, the emissions tests that are conducted are the same for surveillance and confirmatory testing. The second program component involves the testing of a subset of vehicles from the surveillance recruitment for operation of on-board diagnostics (OBD) systems. EPA does not currently recruit vehicles for OBD testing but includes the testing in this ICR in the event that OBD testing is resumed. The third component involves the special investigation of vehicles to address specific issues. The number of vehicles procured under this category may vary from year to year. However, this information request does not ask for approval of the information burden corresponding to such vehicles because the vehicles for this program have not been procured from the public recently and, therefore, there is no information collection burden associated with this testing. Participation in the telephone screenings to identify qualifying light-duty vehicles, as well as the vehicle testing, is strictly voluntary. A group of 25 to 50 potential participants is identified from state vehicle registration records. These potential participants are asked to return a form indicating their willingness to participate and if so, to verify some limited vehicle information. Three of those who return the form are called and asked several screening questions concerning vehicle condition,

operation and maintenance. Additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained. Owners verify the vehicle screening information when they deliver their vehicles to EPA or release the vehicle to EPA, voluntarily provide maintenance records for copying, receive a cash incentive and, if requested, a loaner car, and finally receive their vehicle from EPA at the conclusion of the testing.

Form Numbers: 5900-304, 5900-305, 5900-306, 5900-307, 5900-308, 5900-309.

Respondents/affected entities: A group of 25 to 50 potential participants is identified from state vehicle registration records. These potential participants are asked to return a form indicating their willingness to participate and if so, to verify some limited vehicle information. Three of those who return the form are called and asked several questions concerning vehicle condition, operation and maintenance. Additional groups of potential participants may be contacted until a sufficient number of vehicles have been obtained.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: Approximately 993 vehicle owners/lessees returned EPA's forms indicating interest in participating in the program and approximately 127 ultimately participated.

Frequency of response: On occasion.

Total estimated burden: 228 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$5,864 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 74 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of responses returned to EPA by potential participants and the associated burden.

Dated: October 2, 2020.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2020-22456 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2019-0333; FRL-10015-09-OAR]

Alternative Methods for Calculating Off-Cycle Credits Under the Light-Duty Vehicle Greenhouse Gas Emissions Program: Applications From Toyota Motor North America**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on applications from Toyota Motor North America (“Toyota”) for off-cycle carbon dioxide (CO₂) credits under EPA’s light-duty vehicle greenhouse gas emissions standards. “Off-cycle” emission reductions can be achieved by employing technologies that result in real-world benefits, but where that benefit is not adequately captured on the test procedures used by manufacturers to demonstrate compliance with emission standards. EPA’s light-duty vehicle greenhouse gas program acknowledges these benefits by giving automobile manufacturers several options for generating “off-cycle” CO₂ credits. Under the regulations, a manufacturer may apply for CO₂ credits for off-cycle technologies that result in off-cycle benefits. In these cases, a manufacturer must provide EPA with a proposed methodology for determining the real-world off-cycle benefit. Toyota has submitted applications that describe methodologies for determining off-cycle credits from technologies described in their applications. Pursuant to applicable regulations, EPA is making these off-cycle credit calculation methodologies available for public comment.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2019-0333, to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Linc Wehrly, Director, Light Duty Vehicle Center, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214-4286. Fax: (734) 214-4053. Email address: wehrly.linc@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

EPA’s light-duty vehicle greenhouse gas (GHG) program provides three pathways by which a manufacturer may accrue off-cycle carbon dioxide (CO₂) credits for those technologies that achieve CO₂ reductions in the real world but where those reductions are not adequately captured on the test used to determine compliance with the CO₂ standards, and which are not otherwise reflected in the standards’ stringency. The first pathway is a predetermined list of credit values for specific off-cycle technologies that may be used beginning in model year 2014.¹ This pathway allows manufacturers to use conservative credit values established by EPA for a wide range of technologies, with minimal data submittal or testing requirements, if the technologies meet EPA regulatory definitions. In cases where the off-cycle technology is not on the menu but additional laboratory testing can demonstrate emission benefits, a second pathway allows manufacturers to use a broader array of emission tests (known as “5-cycle” testing because the methodology uses five different testing procedures) to demonstrate and justify off-cycle CO₂ credits.² The additional emission tests allow emission benefits to be demonstrated over some elements of real-world driving not adequately captured by the GHG compliance tests, including high speeds, hard accelerations, and cold temperatures. These first two methodologies were completely defined through notice and comment rulemaking and therefore no additional process is necessary for

manufacturers to use these methods. The third and last pathway allows manufacturers to seek EPA approval to use an alternative methodology for determining the off-cycle CO₂ credits.³ This option is only available if the benefit of the technology cannot be adequately demonstrated using the 5-cycle methodology. Manufacturers may also use this option to demonstrate reductions that exceed those available via use of the predetermined list.

Under the regulations, a manufacturer seeking to demonstrate off-cycle credits with an alternative methodology (*i.e.*, under the third pathway described above) must describe a methodology that meets the following criteria:

- Use modeling, on-road testing, on-road data collection, or other approved analytical or engineering methods;
- Be robust, verifiable, and capable of demonstrating the real-world emissions benefit with strong statistical significance;
- Result in a demonstration of baseline and controlled emissions over a wide range of driving conditions and number of vehicles such that issues of data uncertainty are minimized;
- Result in data on a model type basis unless the manufacturer demonstrates that another basis is appropriate and adequate.

Further, the regulations specify the following requirements regarding an application for off-cycle CO₂ credits:

- A manufacturer requesting off-cycle credits must develop a methodology for demonstrating and determining the benefit of the off-cycle technology and carry out any necessary testing and analysis required to support that methodology.
- A manufacturer requesting off-cycle credits must conduct testing and/or prepare engineering analyses that demonstrate the in-use durability of the technology for the full useful life of the vehicle.
- The application must contain a detailed description of the off-cycle technology and how it functions to reduce CO₂ emissions under conditions not represented on the compliance tests.
- The application must contain a list of the vehicle model(s) which will be equipped with the technology.
- The application must contain a detailed description of the test vehicles selected and an engineering analysis that supports the selection of those vehicles for testing.
- The application must contain all testing and/or simulation data required under the regulations, plus any other

¹ See 40 CFR 86.1869–12(b).² See 40 CFR 86.1869–12(c).³ See 40 CFR 86.1869–12(d).

data the manufacturer has considered in the analysis.

Finally, the alternative methodology must be approved by EPA prior to the manufacturer using it to generate credits. As part of the review process defined by regulation, the alternative methodology submitted to EPA for consideration must be made available for public comment.⁴ EPA will consider public comments as part of its final decision to approve or deny the request for off-cycle credits.

II. Off-Cycle Credit Applications

A. Cold-Storage Evaporator

Toyota is applying for off-cycle GHG credits for the use of Cold-Storage Evaporator HVAC Technology. This technology utilizes phase change material in the HVAC evaporator of vehicles equipped with engine Start & Stop technology to extend the time that cold air can be delivered to the cabin with the engine and compressor off. This reduces the amount of time the engine would otherwise operate solely for the purpose of cooling the cabin.

Toyota is applying for a credit of 0.8 or 1.3 grams/mile (dependent on HVAC configuration) for 2017 and later model years vehicles sold in the U.S. and equipped with the cold storage evaporator. Details of the testing and analysis can be found in the manufacturer's applications.

B. Denso LE40 Low Power Compressor Clutch

Toyota is applying for off-cycle GHG credits for the use of the DENSO LE40 compressor clutch. The LE40 compressor clutch is designed to improve the compressor efficiency by reducing the electric current required to transmit torque from the engine to the compressor.

Toyota is applying for a credit of 0.3 grams/mile for 2016 and later model years for vehicles sold in the U.S. and equipped with the Denso LE40 Compressor Clutch. EPA considers this compressor clutch technology to be a technology that, if approved, will be subject to the maximum limits for an A/C system of 5.0 g/mi for passenger automobiles and 7.2 g/mi for light trucks specified in the regulations.⁵ Details of the testing and analysis can be found in the manufacturer's applications.

C. Seat Heater Engine Control Technology

Toyota is applying for off-cycle GHG credits for a hybrid control strategy that

reduces fuel consumption during warm up while the seat heater is turned on. When the seat heater is used, less thermal energy is required from the engine to maintain comfort. This strategy lowers the target engine coolant temperature threshold allowing the engine to turn off earlier and more frequently to reduce fuel consumption.

Toyota is applying for a credit of 0.6 grams/mile for 2019 and later model years for vehicles sold in the U.S. and equipped with seat heater engine control technology. Details of the testing and analysis can be found in the manufacturer's applications.

III. EPA Decision Process

EPA has reviewed the applications for completeness and is now making the applications available for public review and comment as required by the regulations. The off-cycle credit applications submitted by the manufacturers (with confidential business information redacted) have been placed in the public docket (see **ADDRESSES** section above) and on EPA's website at <https://www.epa.gov/vehicle-and-engine-certification/compliance-information-light-duty-greenhouse-gas-ghg-standards>.

EPA is providing a 30-day comment period on the applications for off-cycle credits described in this notice, as specified by the regulations. The manufacturers may submit a written rebuttal of comments for EPA's consideration, or may revise an application in response to comments. After reviewing any public comments and any rebuttal of comments submitted by manufacturers, EPA will make a final decision regarding the credit requests. EPA will make its decision available to the public by placing a decision document (or multiple decision documents) in the docket and on EPA's website at the same manufacturer-specific pages shown above. While the broad methodologies used by these manufacturers could potentially be used for other vehicles and by other manufacturers, the vehicle specific data needed to demonstrate the off-cycle emissions reductions would likely be different. In such cases, a new application would be required, including an opportunity for public comment.

Dated: October 5, 2020.

Byron Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2020-22424 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2020-0025; FRL-10010-60]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2019 through June 30, 2020 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, 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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2020-0025, 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

⁴ See 40 CFR 86.1869-12(d)(2).

⁵ See 40 CFR 86.1868-12(b).

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.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A “specific exemption” authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. “Quarantine” and “public health” exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A “crisis exemption” is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in “a reasonable certainty of no harm” to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the “reasonable certainty of no harm standard” of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the

crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U.S. States and Territories

Alabama

Department of Agriculture and Industries

Specific exemptions: EPA authorized the use of dinotefuran on a maximum of 175 acres of fuzzy kiwifruit fields to control brown marmorated stink bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.603(b); Effective April 25, 2020 to October 31, 2020.

EPA authorized the use of fenpropathrin on a maximum of 175 acres of fuzzy kiwifruit fields to control brown marmorated stink bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.466(b); Effective April 25, 2020 to October 31, 2020.

California

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of kasugamycin on a maximum of 100,000 acres of almond trees to control bacterial blast (*Pseudomonas syringae* pv. *syringae*). A time-limited tolerance in connection with this action will be established in 40 CFR 180.614(b) in almond and almond hulls to cover any residues that may result from this use. Effective February 14, 2020 to April 15, 2020.

EPA authorized the use of methoxyfenozide on a maximum of 100,000 acres of rice to control armyworm (*Mythimna unipuncta*) and Western Yellowstriped Armyworm (*Spodoptera praefica*). A time-limited tolerance in connection with this action has been established in 40 CFR 180.544(b). Effective April 20, 2020 to October 4, 2020.

EPA authorized the use of bifenthrin on a maximum of 18,000 acres of pomegranates to control leaf-footed plant bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.442(b). Effective July 11, 2020 to December 31, 2020.

Quarantine exemption: EPA authorized the use of streptomycin on up to 23,000 acres of citrus to manage citrus greening disease (also known as Huanglongbing). Time-limited tolerances in connection with past actions for this use have been

established in 40 CFR 180.24(b). Effective April 4, 2020 to April 4, 2021.

Florida

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the use of streptomycin on up to 330,254 acres of citrus to manage citrus greening disease (also known as Huanglongbing). Time-limited tolerances in connection with past actions for this use have been established in 40 CFR 180.245(b). Effective December 31, 2019 to December 31, 2020.

EPA authorized the use of the insecticide clothianidin on a maximum of 125,376 acres of immature (3 to 5 years old) citrus trees to control the Asian citrus psyllid, the vector of citrus greening disease (also known as Huanglongbing) to manage disease transmission. A time-limited tolerance in connection with this action was established in 40 CFR 180.586(b). Effective January 1, 2020 to October 31, 2020.

Georgia

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 200 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective June 18, 2020 to November 15, 2020.

Idaho

Department of Agriculture

Specific exemption: EPA authorized the use of the herbicide pyridate on a maximum of 9,500 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Amaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

Indiana

Office of the Indiana State Chemist

Specific exemption: EPA authorized the use of herbicide pyridate on a maximum of 11,200 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Amaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

Kentucky

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 1,500 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective April 6, 2020 to November 15, 2020.

Maryland

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 3,570 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective May 21, 2020 to October 15, 2020.

Massachusetts

Department of Agricultural Resources

Specific exemption: EPA authorized the use of pronamide on a maximum of 5,000 acres of cranberries to control dodder. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective April 15, 2020 to June 30, 2020.

Michigan

Department of Agriculture and Rural Development

Specific exemption: EPA authorized the use of the herbicide pyridate on a maximum of 1,250 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Armaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

Nevada

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 100,000 acres of rangeland, pastures and conservation reserve program areas to control medusahead and Ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b). Effective March 28, 2020 to March 26, 2021.

New York

Department of Environmental Conservation

Crisis exemption: EPA concurred upon crisis exemptions declared by the

New York Department of Environmental Conservation (NYDEC) on March 16, 2020, for use of peroxyacetic acid and hydrogen peroxide to treat regulated medical waste to control the spread of coronavirus. NYDEC also submitted a full request for public health exemptions to allow the use to continue beyond the 15-day period allowed under stand-alone crisis exemptions. This use became effective on March 16, 2020 and will continue until EPA renders a decision on the public health exemption request.

Public Health Exemptions: EPA authorized the use of peroxyacetic acid and hydrogen peroxide to treat regulated medical waste potentially contaminated with the causal agent of COVID-19, the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). Effective May 28, 2020 to May 28, 2021.

North Carolina

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the postharvest use of thiabendazole on a maximum of 95,000 acres of sweet potatoes to control black rot (*Ceratocystis fimbriata*). A time-limited tolerance in connection with this action has been established in 40 CFR 180.680(b). Effective April 3, 2020 to April 3, 2021.

EPA authorized the use of bifenthrin on a maximum of 3,000 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective June 16, 2020 to October 15, 2020.

Oregon

Department of Agriculture

Specific exemption: EPA authorized the use of the herbicide pyridate on a maximum of 5,200 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Armaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

Pennsylvania

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 24,974 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR

180.442(b). Effective May 21, 2020 to October 15, 2020.

EPA authorized the use of etofenprox for use in mushroom houses on up to 16 million square feet (equivalent to 2,000 mushroom houses) to control Sciarid and Phorid fly species. Tolerances in connection with a previous action have been established in 40 CFR 180.620(a) to cover any residues as a result of this emergency exemption use. Effective June 24, 2020 to June 24, 2021.

South Dakota

Department of Agriculture

Specific exemption: EPA authorized the use of pyridate on a maximum of 910 acres of double-cut mint for postemergence control of herbicide-resistant annual weeds such as Redroot pigweed, *Armaranthus retroflexus*, common lambquarters, kochia and Russian thistle. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

Texas

Department of Agriculture

Specific exemption: EPA authorized the use of clothianidin on a maximum of 4,000 acres of immature citrus trees to manage the transmission of Huanglongbing (HLB) disease vectored by the Asian citrus psyllid. A time-limited tolerance in connection with this action was established in 40 CFR 180.668(b). Effective May 7, 2020 to May 7, 2021.

Utah

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 10,000 acres of rangeland, pastures and CRP to control medusahead and Ventenata. Time-limited tolerances in connection with a previous action have been established in 40 CFR 180.653(b). Effective February 1, 2020 to January 30, 2021.

Virginia

Department of Agriculture and Consumer Services

Specific exemption: EPA authorized the use of bifenthrin on a maximum of 29,000 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective May 21, 2020 to October 15, 2020.

Washington

Department of Agriculture

Specific exemption: EPA authorized the use of the herbicide pyridate on a maximum of 16,000 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Amaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

West Virginia

Department of Agriculture

Specific exemption: EPA authorized the use of bifenthrin on a maximum of 5,986 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective June 16, 2020 to October 15, 2020.

Wisconsin

Department of Agriculture

Specific exemption: EPA authorized the use of the herbicide pyridate on a maximum of 3,100 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Amaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 21, 2020 to August 31, 2020.

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service

Quarantine exemptions: EPA authorized the use of a mixture of sodium hypochlorite and propylene glycol for use under freezing conditions on hard, nonporous surfaces associated with poultry facilities in the United States, for disinfection from Newcastle disease virus. Effective November 1, 2019 to November 1, 2022.

EPA authorized the use of a mixture of potassium peroxymonosulfate and propylene glycol for use under freezing conditions on hard, nonporous surfaces associated with poultry facilities in the United States, for disinfection from Newcastle disease virus. Effective December 4, 2019 to December 4, 2022.

EPA authorized the use of methyl bromide on post-harvest unlabeled imported/domestic commodities to prevent the introduction/spread of any new or recently introduced foreign

pest(s) to any U.S. geographical location. Time-limited tolerances in connection with previous actions for this use have been established in 40 CFR 180.124(b). Effective March 1, 2020 to March 1, 2023.

Centers for Disease Control and Prevention

Public health exemptions: EPA authorized the uses of hydrogen peroxide, didecyl dimethyl ammonium chloride, isopropanol, ethanol, n-alkyl-dimethyl ethylbenzyl ammonium chloride, and n-alkyl dimethyl benzyl ammonium chloride, on hard, nonporous surfaces in health care settings in the United States to disinfect from *Candida auris*. Effective October 16, 2019 to October 16, 2020.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 24, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020-22418 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9053-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)

Filed September 28, 2020 10 a.m. EST Through October 5, 2020 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20200197, Final, TVA, IL, Sugar Camp Energy, LLC Mine Number 1 Boundary Revision 6, Review Period Ends: 11/09/2020, Contact: Elizabeth Smith 865-632-3053.

EIS No. 20200198, Final, TxDOT, TX, North Houston Highway Improvement Project, Review Period Ends: 11/09/2020, Contact: Carlos Swonke 512-416-2734.

EIS No. 20200199, Draft, USA, AK, Heat and Electrical Upgrades at Fort Wainwright, Alaska, Comment Period Ends: 12/08/2020, Contact: Laura Sample 907-361-6323.

EIS No. 20200200, Final, USFS, NV, Lee Canyon EIS, Review Period Ends: 11/

09/2020, Contact: Jonathan Stein 702-515-5418.

EIS No. 20200201, Draft, FHWA, GA, Project DeRenne Draft Environmental Impact Statement and Draft Section 4(f) Evaluation, Comment Period Ends: 11/23/2020, Contact: Aaron Hernandez 404-562-3584. Amended Notice:

EIS No. 20200170, Draft, FAA, NY, LaGuardia Airport Access Improvement Project, Comment Period Ends: 10/20/2020, Contact: Andrew Brooks 718-553-2511.

Revision to FR Notice Published 08/21/2020; Extending the Comment Period from 10/05/2020 to 10/20/2020.

Dated: October 5, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020-22395 Filed 10-8-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0848; FRS 17112]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of

Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 8, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 750 respondents; 9,270 responses.

Estimated Time per Response: 3.54 hours (average burden per response).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201 and 251 of the Communications Act of 1934, as amended.

Total Annual Burden: 32,845 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information. Any respondent that submits information to the Commission that they believe is confidential may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The information collection requirements implement sections 201 and 251 of the Communications Act of 1934, as amended, to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, and to promote

deployment of advanced telecommunications services without significantly degrading the performance of other services. All of the requirements will be used by the Commission and competitive local exchange carriers (LECs) to facilitate the deployment of telecommunications services, including advanced telecommunications services.

Federal Communications Commission.

Cecilia Sigmund,

Associate Secretary, Office of the Secretary.

[FR Doc. 2020-22409 Filed 10-8-20; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX; FRS 17111]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 9, 2020.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Your comment must be submitted into www.reginfo.gov per the

above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-XXXX.

Title: E911 Compliance for Fixed Telephony and Multi-line Telephone Systems.

Form Number: N/A.
Type of Review: New information collection.
Respondents: Business or other for-profit entities.
Number of Respondents and Responses: 1,275,636 respondents; 38,048,948 responses.
Estimated Time per Response: 0.016 hours (one minute).
Frequency of Response: One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 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, 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.

Total Annual Burden: 634,610 hours.
Total Annual Cost: \$1,911,540.
Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is obligated by statute to promote “safety of life and property” and to “encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure” for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and

wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

Section 506 of RAY BAUM’S Act requires the Commission to “consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.” RAY BAUM’S Act also states that, “[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call” RAY BAUM’S Act defines a “9–1–1 call” as a voice call that is placed, or a message that is sent by other means of communication, to a Public Safety Answering Point (PSAP) for the purpose of requesting emergency services.

As part of implementing Section 506 of RAY BAUM’S Act, on August 1, 2019, the Commission adopted a *Report and Order (2019 Order)*, set forth rules requiring Fixed Telephony providers and MLTS providers to ensure that dispatchable location is conveyed with 911 calls.

The Commission’s *2019 Order* adopted §§ 9.8(a) and 9.16(b)(3)(i), (ii), and (iii) to facilitate the provision of automated dispatchable location. For Fixed Telephony and in fixed Multi-line Telephone Systems (MLTS) environments, respective providers must provide automated dispatchable location with 911 calls. For on-premises, non-fixed devices associated with an MLTS, the MLTS operator or manager must provide automated dispatchable location to the appropriate PSAP when technically feasible; otherwise they must provide either dispatchable location based on end-user

manual update, or alternative location information. For off-premises MLTS calls to 911, the MLTS operator or manager must provide (1) dispatchable location, if technically feasible, or, otherwise, either (2) manually-updated dispatchable location, or (3) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost. The requirements adopted in the *2019 Order* account for variance in the feasibility of providing dispatchable location for non-fixed MLTS 911 calls, and the means available to provide it. The information collection requirements associated with these rules will ensure that Fixed Telephony and MLTS providers have the means to provide 911 callers’ locations to PSAPs, thus reducing response times for emergency services.

Federal Communications Commission.
Cecilia Sigmund,
Associate Secretary, Office of the Secretary.
 [FR Doc. 2020–22410 Filed 10–8–20; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10210	AmericanFirst Bank	Clermont	FL	10/1/2020
10211	Butler Bank	Lowell	MA	10/1/2020
10213	First Federal Bank of North Florida	Palatka	FL	10/1/2020

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the

Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

Authority: 12 U.S.C. 1819.
 Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 5, 2020.

James P. Sheesley,
Assistant Executive Secretary.
 [FR Doc. 2020–22355 Filed 10–8–20; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-1866]

Wockhardt Ltd., et al.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is

withdrawing approval of nine abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of November 9, 2020.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676,

Silver Spring, MD 20993-0002, 240-402-6980, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040533	Bethanechol Chloride Tablets, 10 milligrams (mg)	Morton Grove Pharmaceuticals Inc./Wockhardt USA LLC, 6451 Main St., Morton Grove, IL 60053.
ANDA 040534	Bethanechol Chloride Tablets, 25 mg	Do.
ANDA 075015	Acyclovir Sodium for Injection, Equivalent to (EQ) 500 mg base/vial.	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 075773	Pamidronate Disodium for Injection, 30 mg/vial, and 90 mg/vial.	Do.
ANDA 076206	Calcitriol Injection, 0.001 mg/milliliter (mL)	Rockwell Medical, Inc., 30142 S. Wixom Rd., Wixom, MI 48393.
ANDA 076207	Pamidronate Disodium Injection, 30 mg/10 mL (3 mg/mL) and 90 mg/mL (9 mg/mL).	Fresenius Kabi USA, LLC.
ANDA 077788	Albuterol Sulfate Syrup, EQ 2 mg base/5 mL	VistaPharm, Inc., 7265 Ulmerton Rd., Largo, FL 33771.
ANDA 077990	Zolpidem Tartrate Tablets, 5 mg and 10 mg	Carlsbad Technology, Inc., U.S. Agent for Yung Shin Pharmaceutical Industrial Co., Ltd., 4761 Tara Ct., West Bloomfield, MI 48323.
ANDA 202410	Donepezil Hydrochloride Tablets, 23 mg	Hisun Pharmaceutical (Hangzhou) Co., Ltd., U.S. Agent, Hisun Pharmaceuticals USA, Inc., 200 Crossing Blvd., 2nd floor, Bridgewater, NJ 08807.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of November 9, 2020. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on November 9, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: October 5, 2020.

Lauren K. Roth,
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020-22403 Filed 10-8-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-1867]

Novartis Pharmaceuticals Corp., et al.; Withdrawal of Approval of 13 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 13 new drug applications (NDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of November 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993-0002, 301-796-3137, Kimberly.Lehrfeld@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
NDA 003290	Neo-Calglucon (calcium glubionate) Syrup	Novartis Pharmaceuticals Corp., 1 Health Plaza, East Hanover, NJ 07936.
NDA 009816	Cortef Acetate S.E.E. Drops (hydrocortisone acetate) Ophthalmic Solution.	Upjohn, a Pfizer Division, 235 East 42nd St., New York, NY 10017.
NDA 009817	Cortef Acetate (hydrocortisone acetate) Ophthalmic Ointment, 1.5%.	Do.
NDA 010645	Optef Drops (hydrocortisone probutate) Ophthalmic Solution, 0.2%.	Do.
NDA 010155	Mytelase (ambenonium chloride) Tablets, 10 milligrams (mg).	Sanofi-Aventis U.S. LLC, 55 Corporate Dr., Bridgewater, NJ 08807.
NDA 016659	Norinyl 1 + 50 (norethindrone and mestranol) Tablets, 1 mg/0.05 mg.	Actavis Laboratories Ut, Inc. (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 41 Moores Rd., Frazer, PA 19355.
NDA 016807	Thyrolar (liotrix [tetraiodothyronine levothyroxine sodium (T4) and triiodothyronine liothyronine sodium (T3)]) Tablets, 0.0125 mg/0.0031 mg, 0.025 mg/0.0063 mg, 0.05 mg/0.0125 mg, 0.1 mg/0.025 mg, 0.15 mg/0.0375 mg, and 0.25 mg/0.0625 mg.	Allergan Sales, LLC, 5 Giralda Farms, Madison, NJ 07940.
NDA 017919	Ortho Novum 1/35 (ethinyl estradiol and norethindrone) Tablets, 0.035 mg/1 mg.	Janssen Pharmaceuticals, Inc., 1125 Trenton-Harbourton Rd., Titusville, NJ 08560.
NDA 018768	VePesid (etoposide) Injection, 20 mg/mL	Corden Pharma Latina S.p.A., c/o Clinipace Inc., 1434 Spruce St., Suite 100, Boulder, CO 80302.
NDA 019972	Ocupress (carteolol hydrochloride) Ophthalmic Solution, 1%.	Novartis Pharmaceuticals Corp.
NDA 021590	FazaClo (clozapine) Orally Disintegrating Tablets, 12.5 mg, 25 mg, 100 mg, 150 mg, and 200 mg.	Jazz Pharmaceuticals Ireland Ltd., c/o Jazz Pharmaceuticals, Inc., 3170 Porter Dr., Palo Alto, CA 94304.
NDA 021664	Bromday/Xibrom (bromfenac) Ophthalmic Solution, Equivalent to 0.09%.	Bausch & Lomb Inc., 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
NDA 022018	Lamivudine and Zidovudine Tablets, 150 mg lamivudine and 300 mg zidovudine.	Pharmacare Ltd., c/o Lachman Consultants Services, Inc., 1600 Stewart Ave., Suite 604, Westbury, NY 11590.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of November 9, 2020. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on November 9, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: October 5, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020-22402 Filed 10-8-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Jointly Sponsored Predoctoral Training Program in the Neurosciences (T32).

Date: November 2, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-9734, millerda@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Secondary Analysis and Archiving of BRAIN Initiative Data (R01).

Date: November 5, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301-402-8152, erin.gray@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 5, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-22439 Filed 10-8-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, November 12, 2020, 10:00 a.m. to November 12, 2020, 5:00 p.m., National Cancer Institute Shady Grove, Rockville, MD 20850 which was published in the **Federal Register** on September 04, 2020, 85 FR 55308.

This notice is being amended to change the meeting start time from 10:00 a.m. to 1:00 p.m. The meeting will now be held from 1:00 p.m. to 5:00 p.m. on November 12, 2020. The meeting is closed to the public.

Dated: October 5, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-22437 Filed 10-8-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: November 6, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Chief, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301-594-3456, schmidma@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: October 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-22438 Filed 10-8-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing; Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on October 1, 2020. That Notice requires a correction in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Amy F. Petrik, Ph.D., licensing contact, 240-627-3721; amy.petrik@nih.gov. Licensing information and copies of the U.S. patent application may be obtained by communicating with the licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 1, 2020, in FR Doc. 2020-21708, on page 61961, as found within the **SUPPLEMENTARY INFORMATION** section. The title of the invention, currently reads "Structure-Based Design of SARS2-CoV-2 Spike Immunogens Stabilized in the RBD-All Down Conformation" and should read "Structure-Based Design of SARS-CoV-2 Spike Immunogens Stabilized in the RBD-All Down Conformation".

Dated: October 5, 2020.

Daniel R Hernandez,

Federal Register Officer, National Institutes of Health.

[FR Doc. 2020-22370 Filed 10-8-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on October 30, 2020. The topic for this meeting will be "Health Literacy and Numeracy: Considerations for Equity Approaches." The meeting is open to the public.

DATES: The meeting will be held on October 30, 2020 from 1 p.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held via the online video conferencing—Zoom. For details, and to register, please contact dmicc@mail.nih.gov.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, see the DMICC website, www.diabetescommittee.gov, or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892-2560, telephone: 301-496-6623; FAX: 301-480-6741; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S. Code § 285c-3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The October 30, 2020 DMICC meeting will focus on "Health Literacy and

Numeracy: Considerations for Equity Approaches.”

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, www.diabetescommittee.gov.

Dated: October 5, 2020.

Bruce Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2020-22354 Filed 10-8-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning October 1, 2020, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298-1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must

be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2020-18, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2020, and ending on December 31, 2020. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (0%) plus two percentage points (2%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remain the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning January 1, 2021, and ending on March 31, 2021.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	123120	3	3	2

Dated: October 5, 2020.

Jeffrey Caine,
Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2020–22435 Filed 10–8–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–32; OMB Control No.: 2502–0404]

60-Day Notice of Proposed Information Collection: Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 8, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC

20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov. Copies of available documents submitted to OMB may be obtained.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Requirements for Single Family Mortgage Instruments.

OMB Approval Number: 2502–0404.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: This information is used to verify that a mortgage has been properly recorded and is eligible for FHA insurance.

Respondents (i.e. affected public): Individuals or household.

Estimated Number of Respondents: 2,312.

Estimated Number of Responses: 1,119,696.

Frequency of Response: One per mortgage.

Average Hours per Response: 5 minutes.

Total Estimated Burdens: 93,271.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden 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 those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Assistant Secretary for Housing—Federal Housing Commissioner, Dana T. Wade, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: October 6, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–22394 Filed 10–8–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FAC–2020–N124; FF03F43100–XXXF1611NR; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Sea Lamprey Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without Office of Management and Budget (OMB) approval.

DATES: Interested persons are invited to submit comments on or before November 9, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by clicking on the link “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–Sea Lampreys in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On June 1, 2020, we published in the **Federal Register** (85 FR 33192) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 31, 2020. We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

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.

Abstract: Service staff at the Marquette and Ludington biological

stations fulfill U.S. obligations under the Convention on Great Lakes Fisheries Between the United States of America and Canada, Washington, 1954, and the Great Lakes Fishery Act of 1956 (16 U.S.C. 931 *et seq.*). The Service works with State, Tribal, and other Federal agencies to monitor progress towards fish community objectives for sea lampreys in each of the Great Lakes, and also to develop and implement actions to achieve these objectives. Activities are closely coordinated with those of State, Tribal, and other Federal and provincial management agencies, nongovernmental organizations, private landowners, and the public. Our primary goal is to conduct ecologically sound and publicly acceptable integrated sea lamprey control.

The Sea Lamprey Control Program is administered and funded by the Great Lakes Fishery Commission (GLFC) and implemented by two control agents, the U.S. Fish and Wildlife Service and Fisheries and Oceans Canada, who often partner on larger projects. The sea lamprey (*Petromyzon marinus*), a parasitic fish species native to the Atlantic Ocean, parasitizes other fish species by sucking their blood and other bodily fluids. Having survived through at least four major extinction events, the species has remained largely unchanged for more than 340 million years. The sea lamprey differs from many other fishes, in that it does not have jaws or other bony structures, but instead has a skeleton made of cartilage. Sea lampreys prey on most species of large Great Lakes fish such as lake trout, salmon,

lake sturgeon, whitefish, burbot, walleye, and catfish.

In the 1800s, sea lampreys invaded the Great Lakes system via manmade locks and shipping canals. Their aggressive behavior and appetite for fish blood wreaked havoc on native fish populations, decimating an already vulnerable lake trout fishery. The first recorded observation of a sea lamprey in the Great Lakes was in 1835 in Lake Ontario. For a time, Niagara Falls served as a natural barrier, confining sea lampreys to Lake Ontario and preventing them from entering the remaining four Great Lakes. However, in the early 1900s, modifications were made to the Welland Canal, which bypasses Niagara Falls and provides a shipping connection between Lakes Ontario and Erie. These modifications allowed sea lampreys access to the rest of the Great Lakes system. Within a short time, sea lampreys spread throughout the system: Into Lake Erie by 1921, Lakes Michigan and Huron by 1936 and 1937, and Lake Superior by 1938. Sea lampreys were able to thrive once they invaded the Great Lakes because of the availability of excellent spawning and larval habitat, an abundance of host fish, a lack of predators, and their high reproductive potential—a single female can produce as many as 100,000 eggs.

The Sea Lamprey Control Program (SLCP) maintains an internal database. In existence for more than 20 years, it contains information critical to the delivery and evaluation of an integrated control program to manage invasive sea lamprey populations in the five Great

Lakes. The storage of data in this database not only documents the history of the SLCP since inception in 1953, but it also provides data to steer assessment and control of invasive sea lamprey populations in the Great Lakes in partnership with the GLFC. We provide annual population data to Federal and State regulatory agencies to inform critical evaluations used to issue permits to allow sea lamprey control actions. The SLCP database maintains the points of contact for landowners to request landowner permission to access their land for treatment. The Service collects basic contact information for the landowner (name, home address, phone number, cell phone number, and email address), along with alternate contact information, whether they allow access to their land, methods of transportation allowed on property, whether a gate key or gate combination is needed to access the land, whether the landowner irrigates the land, and an opportunity to ask additional questions about treatment or sea lamprey management.

Title of Collection: Sea Lamprey Control Program.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection of information in use without an OMB Control Number.

Respondents/Affected Public: Individuals, private sector, and State/local/Tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours *
Landowner Contact Information for Access Approval					
Individuals	400	1	400	5 minutes	33
Private Sector	25	1	25	5 minutes	2
Government	15	1	15	5 minutes	1
<i>Totals</i>	440	.....	440	.....	36

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 6, 2020.

Madonna Baucum,
Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–22400 Filed 10–8–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS–HQ–OLE–2020–N123; FF09L01300/
FXLE1220090000/201; OMB Control
Number 1018–New]

**Agency Information Collection
Activities; U.S. Fish and Wildlife
Service Law Enforcement Training
System**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, we,
the United States Fish and Wildlife
Service (Service), are proposing a new
information collection.

DATES: Interested persons are invited to
submit comments on or before
December 8, 2020.

ADDRESSES: Send your comments on the
information collection request (ICR) by
mail to the Service Information
Collection Clearance Officer, U.S. Fish
and Wildlife Service, MS: PRB (JAO/
3W), 5275 Leesburg Pike, Falls Church,
VA 22041–3803 (mail); or by email to
Info_Coll@fws.gov. Please reference
OMB Control Number “1018–Acadis” in
the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To
request additional information about
this ICR, contact Madonna L. Baucum,
Service Information Collection
Clearance Officer, by email at *Info_
Coll@fws.gov*, or by telephone at (703)
358–2503. Individuals who are hearing
or speech impaired may call the Federal
Relay Service at 1–800–877–8339 for
TTY assistance.

SUPPLEMENTARY INFORMATION: In
accordance with the Paperwork
Reduction Act (PRA, 44 U.S.C. 3501 *et
seq.*) and its implementing regulations
at 5 CFR 1320, all information
collections require approval under the
PRA. We may not conduct or sponsor
and you are not required to respond to
a collection of information unless it
displays a currently valid OMB control
number.

As part of our continuing effort to
reduce paperwork and respondent
burdens, we invite the public and other
Federal agencies 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.

We are especially interested in public
comment addressing the following:

(1) Whether or not the collection of
information is necessary for the proper
performance of the functions of the
agency, including whether or not the
information will have practical utility;

(2) The accuracy of our estimate of the
burden for this collection of
information, including the validity of
the methodology and assumptions used;

(3) Ways to enhance the quality,
utility, and clarity of the information to
be collected; and

(4) How might the agency 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 response.

Comments that you submit in
response to this notice are a matter of
public record. We will include or
summarize each comment in our request
to OMB to approve this ICR. 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.

Abstract: The Branch of Training and
Inspection (BTI) in the Service’s Office
of Law Enforcement coordinates and
conducts training for Service special
agents, wildlife inspectors, and
administrative staff, as well as for State,
Native American, and foreign
individuals responsible for wildlife and
habitat protection. Over the past decade,
there have been substantial increases in
the numbers of programs and
individuals trained, hours of training
provided, and numbers of training sites.

There is a critical need for a
comprehensive, reliable, and secure
internet-based system capable of
planning, coordinating, and tracking the
increased training-associated
information and workflow, as well as
the associated equipment, materials,
and supplies required to successfully
accomplish and sustain our vital
training environments.

The BTI purchased the Acadis
Readiness Suite, by Envisage
Technologies. This software suite
provides the Service with the
opportunity to enhance the
standardization of many of the internal

processes associated with training and
also provides us with an improved
ability to respond to inquiries from
Congress, the Department of the Interior,
and other external agencies. The
software suite will enhance the ability
of the BTI to:

- Schedule/track internal and
external training events;
- Improve the ability to register/track
both our internal and external student
population;
- To maintain training records
throughout the career of Service
personnel;
- To improve the ability to test and
survey Service student populations;
- To establish a robust lesson plan
repository; and
- To respond to inquiries from
internal and external agencies.

In order to administer this proposed
collection of information, the Service
will need to collect the following
information from prospective trainees:

- Full legal name;
- Gender;
- Country, city, and date of birth;
- Work address, telephone number,
and email address;
- Official passport number, country
of issue, expiration date, and national
identification number (foreign
government students only);
- Emergency contact information;
- Education, to include languages
spoken;
- Agency/department name and
address;
- Title/rank and level in agency;
- Law enforcement officer
experience; and
- Supervisor’s name, email address,
and phone number.

The Service will use the information
collected to record, track, and manage
training records of domestic and foreign
students affiliated with law enforcement
agencies who attend training offered by
the Service. The information will
provide us with the capability to search
the records of previous attendees (upon
official inquiry only) by name, country
of origin, or specific identifying number.
We will only use students’ information
in the Acadis Readiness Suite for
administrative functions such as signing
up/registering for training, training
history, and training requirements.

The authorities for the Service to
collect the required information
necessary to administer training
programs utilizing the Acadis Readiness
Suite include:

- Bald and Golden Eagle Protection
Act (16 U.S.C. 668–668c);
- Lacey Act (18 U.S.C. 42–43; 16
U.S.C. 3371–3378);

- National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee);
- Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718h);
- Migratory Bird Treaty Act (16 U.S.C. 703–712);
- Endangered Species Act (16 U.S.C. 1531–1543);
- Marine Mammal Protection Act (16 U.S.C. 1361–1407);
- Upper Mississippi River National Wildlife and Fish Refuge Act (16 U.S.C. 721–731);
- Bear River Migratory Bird Refuge Act (16 U.S.C. 690);
- Refuge Recreation Act (16 U.S.C. 460k–460k–4);

- Tariff Act of 1930 (19 U.S.C. 1202–1527);
- Uniform Federal Crime Reporting Act (28 U.S.C. 534);
- Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458);
- Homeland Security Act of 2002 (Pub. L. 107–296);
- USA PATRIOT Act of 2001 (Pub. L. 107–56);
- USA PATRIOT Improvement Act of 2005 (Pub. L. 109–177);
- Homeland Security Presidential Directive 12—Policy for a Common Identification Standard for Federal Employees and Contractors; and
- Criminal Intelligence Systems Operating Policies, 28 CFR part 23.

Title of Collection: U.S. Fish and Wildlife Service Law Enforcement Training System.
OMB Control Number: 1018–New.
Form Number: None.
Type of Review: New.
Respondents/Affected Public: Domestic and international students who attend the law enforcement/conservation training offered by the Service’s BTL.
Respondent’s Obligation: Required to obtain or retain a benefit.
Frequency of Collection: One time for the initial registration, and on occasion for training session selections and post-course evaluations.
Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response	Estimated annual burden hours
Account Registration					
State/Local/Tribal Govt	100	1	100	15 mins	25
Foreign Government	400	1	400	15 mins	100
Training Session Selection					
State/Local/Tribal Govt	100	1	100	15 mins	25
Foreign Government	400	1	400	15 mins	100
Post Course Evaluation					
State/Local/Tribal Govt	100	1	100	15 mins	25
Foreign Government	400	1	400	15 mins	100
<i>Totals</i>	<i>1,500</i>	<i>.....</i>	<i>1,500</i>	<i>.....</i>	<i>375</i>

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 6, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–22399 Filed 10–8–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–WSFR–2020–N121; FF09W25000–201–FXGO166409WSFR0; OMB Control Number 1018–0100]

Agency Information Collection Activities; Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before December 8, 2020.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection

Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–0100 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov*, or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: We issue financial assistance through grants and cooperative agreement awards to individuals; commercial organizations; institutions of higher education; non-profit organizations; foreign entities; and State, local, and Tribal governments. The Service administers a wide variety of financial assistance programs, authorized by Congress to address the Service's mission, as listed in the System for Award Management (SAM) Assistance Listings, previously referred to as the Catalog of Federal Domestic Assistance. SAM provides public descriptions of assistance listings

of Federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and non-financial assistance programs administered by departments and establishments of the Federal government. The Assistance Listings are assigned unique numbers and provide information on program types, the specific type of assistance for each program, and the applicable financial assistance authorities for each program. See the Service's active Assistance Listings on *SAM.gov* at https://beta.sam.gov/search?index=cfd&page=1&organization_id=100156642.

The Service currently manages the following types of assistance programs:

- Formula Grants
- Project Grants
- Project Grants (Discretionary)
- Cooperative Agreements (Discretionary Grants)
- Direct Payments with Unrestricted Use
- Use of Property, Facilities, and Equipment
- Provision of Specialized Services
- Advisory Services and Counseling
- Dissemination of Technical Information
- Training

Some assistance programs are mandatory and award funds to eligible recipients according to a formula prescribed in law or regulation. Other programs are discretionary and award funds based on competitive selection and merit review processes. Mandatory award recipients must give us specific, detailed project information during the application process so that we may ensure that projects are eligible for the mandatory funding, are substantial in character and design, and comply with all applicable Federal laws. Applicants to discretionary programs must give us information as dictated by the program requirements and as requested in the notice of funding opportunity (NOFO), including that information that addresses ranking criteria. All recipients must submit financial and performance reports that contain information necessary for us to track costs and accomplishments. The recipients' reports must adhere to schedules and rules in 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Part 200 prescribes the information that Federal agencies must collect, and financial assistance applicants and recipients must provide to receive benefits under Federal financial assistance programs, and supports this information collection.

The Service provides technical and financial assistance to other Federal agencies, States, local governments, Native American tribes, nongovernmental organizations, citizen groups, and private landowners for the conservation and management of fish and wildlife resources. The process begins with the submission of an application. The respective program reviews and prioritizes proposed projects based on their respective project selection criteria. Pending availability of funding, applicants can submit their application documents to the Service through the Federal *Grants.gov* website or through the Department's grants management system (currently the U.S. Department of Health and Human Services' GrantSolutions), when solicited by the Service through a Funding Opportunity.

As part of this collection of information, the Service collects the following types of information requiring approval under the PRA:

A. Application Package: We use the information provided in applications to:

(1) Determine eligibility under the authorizing legislation and applicable program regulations; (2) determine allowability of major cost items under the Cost Principles at 2 CFR 200; (3) select those projects that will provide the highest return on the Federal investment; and (4) assist in compliance with laws, as applicable, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The full application package (submitted by the applicant) generally includes the following:

- Required Federal financial assistance application forms (SF-424 suite of forms, as applicable to specified project).
- Project Narrative—generally includes items such as:
 - Statement of need,
 - Project goals and objectives,
 - Methods used and timetable,
 - Description of key personnel qualifications,
 - Description of stakeholders or other relevant organizations/individuals involved and level of involvement,
 - Project monitoring and evaluation plan, and/or
 - Other pertinent project specific information.
- Pertinent project budget-related information—generally includes items such as:
 - Budget justification,
 - Indirect cost statement,
 - Federally-funded equipment list, and/or

○ Certifications and disclosures.

B. *Amendments*: Recipients must provide written explanation and submit prior approval requests for budget or project plan revisions, reporting due date extensions, or other changes to approved award terms and conditions. The information provided by the recipient is used by the Service to determine the eligibility and allowability of activities and to comply with the requirements of 2 CFR 200.

C. *Reporting Requirements*: Reporting requirements associated with financial assistance awards generally include the following types of reports:

- Federal Financial Reports,
- Performance reports, and
- Real Property Status Reports, when applicable.

D. *Recordkeeping Requirements*: In accordance with 2 CFR 200.333, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years after the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity (in the case of a subrecipient) (unless an exemption as described in 200.333 applies that requires retention of records longer than 3 years).

Proposed Revisions

Consolidation of OMB Control No. 1018-0007 into 1018-0100

The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*, except 777e-1) provide authority for Federal assistance to the States for management and restoration of fish and wildlife. These Acts and the regulations in the Code of Federal Regulations (CFR) at 50 CFR 80, subpart D, require that States, territories, and the District of Columbia annually certify their hunting and fishing license sales. The Service's Wildlife and Sport Fish Restoration (WSFR) program currently collects those certifications under OMB Control No. 1018-0007, "Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80, Subpart D." The WSFR program continues to enhance use of their "Wildlife Tracking and Reporting Actions for the Conservation of Species (TRACS)" system to collect information electronically from financial assistance applicants and

recipients. As of Federal fiscal year 2021, WSFR will begin using TRACS to collect State license data and certifications electronically. As this control number includes the Wildlife TRACS system collection, in this revision we are consolidating the OMB Control No. 1018-0007 information collection requirements into this collection. If OMB approves this request, we will discontinue OMB Control Number 1018-0007.

Consolidation of OMB approvals for Service financial assistance-related collections into a single collection reduces burden on the public by ensuring consistency in the application and award administration processes across all Service financial assistance programs.

Foreign Aid Transparency and Accountability Act Compliance

We have begun implementation of the enhanced results-oriented accountability requirements in the Foreign Aid Transparency and Accountability Act (Pub. L. 114-191), OMB guidance memorandum M-18-04, "Monitoring and Evaluation Guidelines for Federal Departments and Agencies that Administer United States Foreign Assistance," and OMB revisions to 2 CFR part 200 published August 13, 2020 (85 FR 49506). To meet the enhanced requirements, some programs may collect more performance information than previously collected.

Title of Collection: Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.
OMB Control Number: 1018-0100.
Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; commercial organizations; institutions of higher education; non-profit organizations; foreign entities; and State, local, and Tribal governments.

Total Estimated Number of Annual Respondents: 7,166.

Total Estimated Number of Annual Responses: 10,801.

Estimated Completion Time per Response: Varies from 3 hours to 203 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 192,355.

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.*).

Dated: October 6, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020-22398 Filed 10-8-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/
A0A501010.999900]

HEARTH Act Approval of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California Business and Residential Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California (Tribe) leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business and residential leases without further BIA approval.

DATES: This approval took effect on October 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, sharelene.roundface@bia.gov, (505) 563-3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations,

including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White*

Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA

surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–22425 Filed 10–8–20; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–463 and 731–TA–1159 (Second Review)]

Oil Country Tubular Goods From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the countervailing and antidumping duty orders on oil country tubular goods from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 6, 2020

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202)708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW,

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 18268, April 1, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 9, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the

notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before October 21, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 21, 2020. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

² The Commission has found the joint response to its notice of institution filed on behalf of seven domestic producers of oil country tubular goods, BENTELER Steel/Tube Manufacturing Corp., IPSCO Tubulars, Inc., United States Steel Corporation, Vallourec STAR, L.P., Welded Tube USA Inc., Maverick Tube Corporation, and Tenaris Bay City, Inc. (collectively, "domestic interested parties") to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Issued: October 5, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-22382 Filed 10-8-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-77]

Fresh, Chilled, or Frozen Blueberries; Institution of Investigation, Scheduling of Public Hearings, and Determination That the Investigation Is Extraordinarily Complicated

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and scheduling of public hearings; determination that the investigation is extraordinarily complicated.

SUMMARY: Following receipt of a request from the United States Trade Representative ("USTR") on September 29, 2020, the Commission has instituted Investigation No. TA-201-77 pursuant to section 202 of the Trade Act of 1974 ("the Act") to determine whether fresh, chilled, or frozen blueberries are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission has determined that this investigation is "extraordinarily complicated" within the meaning of section 202(b)(2)(B) of the Act, and will make its injury determination within 135 days after the petition was filed, or by February 11, 2021. The Commission will submit to the President the report required under section 202(f)(1) of the Act within 180 days after the date on which the petition was filed, or by March 29, 2021.

DATES: September 29, 2020.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202-205-2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>).

¹ A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 202 of the Act (19 U.S.C. 2252), in response to a request filed on September 29, 2020, by the USTR.

The imported articles covered by this investigation are fresh, chilled, or frozen blueberries (“blueberries”). For Customs purposes, the blueberries covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 0810.40.0024; 0810.40.0026; 0810.40.0029; 0811.90.2010; 0811.90.2024; and 0811.90.2030. These HTSUS numbers are provided for convenience, and the written description of the scope is dispositive.

Determination that investigation is extraordinarily complicated.—The Commission has determined that this investigation is “extraordinarily complicated” within the meaning of section 202(b)(2)(B) of the Act (19 U.S.C. 2252(b)(2)(B)). The Commission's decision to designate this investigation “extraordinarily complicated” is based on the complexity of the investigation, including the need to collect data and other information from a large number of firms involved in the domestic production, processing, and/or marketing of blueberries. Ordinarily, the Commission is required to make its injury determination within 120 days after the petition was filed, or by January 27, 2021. The statute permits the Commission to take up to 30 additional days to make its injury determination in an investigation where it determines that the investigation is extraordinarily complicated. In this instance, the Commission intends to take fifteen extra days and make its injury determination by February 11, 2021. As required by section 202(f)(1) of the Act (19 U.S.C. 2252(f)(1)), the Commission will submit its report to the President no later than 180 days after the day on which the USTR requested the investigation.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or

their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI).—Pursuant to § 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under an administrative protective order (APO) issued in the investigation in accordance with the procedures set forth in section 206.17 of the rules, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. The Secretary will maintain a separate service list for those parties authorized to receive CBI under the APO.

The Commission may also include some or all CBI submitted in this investigation in the report it sends to the President and the U.S. Trade Representative in this or a related investigation. The Commission will not otherwise disclose information which it considers to be CBI unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. See 19 U.S.C. 2252(a)(8) and 19 U.S.C. 1332(g).

Hearings on injury and remedy.—The Commission has scheduled separate hearings in connection with the injury phase and remedy phase (if necessary) of this investigation. It appears at this time that the injury phase hearing and possibly the remedy phase hearing will be held via an online videoconferencing platform. Information about the place and form of the hearings, including about how to participate in and/or view the hearings, will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission's website periodically for updates.

The hearing on injury will be held beginning at 9:30 a.m. EST on January 12, 2021, either via an online videoconferencing platform or at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. In the event the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on February 25, 2021. Requests to appear at the hearings should be filed electronically with the Secretary to the Commission on or before December 30, 2020 for the injury

hearing, and on or before February 19, 2021 for the remedy hearing. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearings.

All parties and nonparties desiring to appear at the hearings and make oral presentations should participate in prehearing conferences to be held on January 11, 2021 for the injury hearing and February 24, 2021 for the remedy hearing, if deemed necessary. Oral testimony and written materials to be submitted at the public hearings are governed by sections 201.6(b)(2) 201.13(f), and 206.5 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the respective hearings.

Written submissions.—Each party which is an interested party may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of sections 201.8, 206.7, and 206.8 of the Commission's rules. Please note that section 201.8 of the Commission's rules has been temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

The deadline for filing prehearing briefs on injury is December 29, 2020; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. 2252(a)(6)(B), is February 18, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in sections 201.13, 206.5, and 206.8 of the Commission's rules, and posthearing briefs, which must conform with the provisions of sections 201.8, 201.13, 206.7, and 206.8 of Commission's rules. Persons appearing at the injury and/or remedy phase hearings must file, with the Secretary, an electronic copy of the oral statement they plan to present at the hearing no later than noon, January 11, 2021, and February 24, 2021, respectively. The deadline for filing posthearing briefs for the injury phase of the investigation is January 19, 2021. The deadline for filing posthearing briefs for the remedy phase of the investigation, if any, is March 3, 2021.

No posthearing brief, either in the injury phase or any remedy phase, shall

exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on pages measuring 8.5 x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing for the injury phase, and at any hearing for the remedy phase, within a specified time. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before January 19, 2021, and pertinent to the consideration of remedy on or before March 3, 2021.

Except as provided above, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of sections 201.6 and 206.17 of the Commission's rules. The Commission's *Handbook on E-Filing*, available on the Commission's website at <https://edis.usitc.gov>, further explains the Commission's rules with respect to electronic filing.

Any additional written submission to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such a submission, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

Authority: This investigation is being conducted under authority of Section 202 of the Act; this notice is published pursuant to section 203(b)(3) of the Act.

By order of the Commission.

Issued: October 6, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-22423 Filed 10-8-20; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0026]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eComments Requested; Revision of a Currently Approved Collection; Report of Theft or Loss—Explosive Materials—ATF Form 5400.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) OMB 1140-0026 (Report of Theft or Loss—Explosive Materials—ATF Form 5400.5), is being revised to include separate categories of loss with descriptions and example scenarios, as well as additional clarifications to improve user experience when completing this form. This IC also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until December 8, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: William O'Brien, Explosives Industry Programs Branch, Firearms and Explosives Industry Division either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at eipb-informationcollection@atf.gov, or by telephone at 202-648-7120.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Report of Theft or Loss—Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF Form 5400.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households, Not-for-profit institutions, Farms, Federal Government, and State, Local, or Tribal Government.

Abstract: According to 27 CFR 555.30 (a) entitled *Reporting Theft or Loss of Explosive Materials*, "Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-461-8841 (nationwide toll free number) and on ATF F 5400.5 [*Report of Theft or Loss—Explosive Materials*], in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities."

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form annually, and it will take each respondent approximately 1 hour and 48 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the*

collection: The estimated annual public burden associated with this collection is 540 hours, which is equal to 300 (# of respondents) * 1 (# of responses per respondents) * 1.8 (1 hour and 48 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 6, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–22453 Filed 10–8–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–720]

Bulk Manufacturer of Controlled Substances Application: Purisys, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Purisys, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 8, 2020. Such persons may also file a written request for a hearing on the application on or before December 8, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 27, 2020, Purisys, LLC, 1550 Olympic Drive, Athens, Georgia 30601–1602, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Norlevorphanol	9634	I

The company plans to manufacture the above-listed controlled substances as clinical trial and starting materials to make compounds for distribution to its customers. No other activity for these drug codes is authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–22442 Filed 10–8–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven A. Holper, M.D.; Decision and Order

On October 22, 2019, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government or DEA), issued an Order to Show Cause (hereinafter, OSC) to Steven A. Holper, M.D., (hereinafter, Registrant), of Las Vegas, Nevada. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 5 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BH2498106. It alleged that Registrant is without "authority to handle controlled substances in Nevada, the state in which [Registrant is] registered with the DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that Registrant's state controlled substance license expired on October 21, 2018. *Id.* at 1–2. The OSC also alleged that Registrant's state medical license was revoked by the Board of Medical Examiners of the State of Nevada on September 6, 2019. *Id.* at 2. The OSC further alleged that Registrant is not eligible to obtain or retain a DEA registration because he lacks state authority to handle controlled substances in the state of Nevada. *Id.*

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit

a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

A DEA Diversion Investigator personally served Registrant with the OSC on December 16, 2019. RFAAX 12, at 2–3 (Declaration of Diversion Investigator One). I find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. RFAAX 11, at 3–4 (Declaration of Diversion Investigator Two). Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.46.

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BH2498106 at the registered address of 3233 W. Charleston Blvd. 202, Las Vegas, NV 89102. RFAAX 1 (Registrant's DEA Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration will expire on its own terms on October 31, 2020. *Id.*

DEA Investigation and the Status of Registrant's State Licenses

On July 22, 2019, Registrant was sentenced in the United States District Court for the District of Nevada on a matter related to his conviction on one count of unlawful distribution of a controlled substance. RFAAX 11, at 2. On August 12, 2019, a DEA Diversion Investigator (hereinafter, DI Two) asked Registrant, through his legal counsel, to voluntarily surrender his DEA registration. *Id.* Registrant declined. *Id.*

The General Counsel for the Nevada State Board of Pharmacy (hereinafter, Pharmacy Board) sent DI Two a letter dated September 17, 2019, stating that Registrant did not renew his Nevada controlled substance license and did not hold an active controlled substance license with the Pharmacy Board. RFAAX 4. According to the online records of the Pharmacy Board, Registrant's controlled substance

license, license no. CS057748, expired on October 31, 2018, *id.*; RFAAX 9 (Printout of Pharmacy Board website dated March 25, 2020), and remains closed,¹ <https://online.nvbop.org/#/verifylicense> (last visited September 24, 2020).

On September 6, 2019, the Nevada State Board of Medical Examiners (hereinafter, Medical Board) revoked Registrant's medical license, license no. 6061, pursuant to a settlement agreement between Registrant and the Investigative Committee of the Medical Board. RFAAX 3 (Settlement Agreement). The Investigative Committee of the Medical Board had filed a Complaint on April 3, 2019, charging Registrant with "violating the Medical Practice Act." *Id.* at 1. Specifically, the Complaint alleged "one (1) violation of NRS 640.306(1)(c), Illegal Dispensing of Controlled Substances (Count 1), one (1) violation of NRS 630.306(1)(p), Unsafe or Unprofessional Conduct (Count II), and one (1) violation of NRS 630.301(9), Disreputable Conduct (Count III)." *Id.* at 1–2. Pursuant to the Settlement Agreement, Registrant admitted to Count 1 of the Complaint and agreed that the Medical Board could issue an order finding that Registrant "engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act." *Id.* at 4. The Settlement Agreement stated that, upon adoption of the Agreement by the Medical Board, Registrant's medical license would be immediately revoked and Registrant would be ineligible to apply for reinstatement for a period of three years. *Id.* The Medical Board adopted the Settlement Agreement on September 6, 2019. *Id.* at 8.

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of medicine nor licensed to dispense controlled substances in

Nevada, the state in which Registrant is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

Nevada law gives authority to "practitioners" to dispense controlled substances, Nev. Rev. Stat. § 453.337 (West 2020), and requires that "[e]very practitioner . . . who dispenses any controlled substance within this State

. . . shall obtain biennially a registration issued by the [Pharmacy Board]," Nev. Rev. Stat. § 453.226(1) (West 2020). Nevada law further defines "practitioner" to mean "a physician . . . who holds a license to practice his or her profession in this State and is registered pursuant to [the Uniform Controlled Substances Act]." Nev. Rev. Stat. § 453.126(1) (West 2020).

Here, the undisputed evidence in the record is that Registrant's license to practice medicine is revoked. As such, he is not a "practitioner," a physician licensed to practice his profession in Nevada and registered to dispense controlled substances, according to Nevada law. Further, under Nevada law, a practitioner who dispenses a controlled substance in Nevada must be registered. The undisputed record evidence is that Registrant's Nevada controlled substance license is expired. Thus, because Registrant lacks authority to dispense controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BH2498106 issued to Steven A. Holper, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Steven A. Holper, M.D. to renew or modify this registration, as well as any pending application of Steven A. Holper, M.D. for registration in Nevada. This Order is effective November 9, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22390 Filed 10–8–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. D.R. Horton, Inc.*, Case No. 8:20–cv–02271–CEH–CPT, was lodged with the United States District Court for the Middle District of Florida, Tampa Division, on October 1, 2020.

This proposed Consent Decree concerns a complaint filed by the United States, pursuant to Sections 309 and 404 of the Clean Water Act

¹ I take official notice of the online records of the Nevada State Board of Pharmacy. Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (dea.addo.attorneys@dea.usdoj.gov).

("CWA"), 33 U.S.C. 1319 and 1344, against Defendant D.R. Horton, Inc. ("Defendant") for discharging pollutants into waters of the United States in Manatee County, Florida without authorization, in violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a). The proposed Consent Decree resolves these allegations by requiring the Defendant to perform mitigation and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin McDermott, United States Department of Justice, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044-7611, and refer to *United States v. D.R. Horton, Inc.*, DJ #90-5-1-1-21336.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, Tampa Division, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, FL 33602. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2020-22383 Filed 10-8-20; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities, Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be

properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Quarterly Census of Employment and Wages Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before December 8, 2020.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Workforce Agencies (SWAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The QCEW data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas (MSAs), the States, and the nation. The QCEW program provides a virtual census of nonagricultural employees and their wages, with about 54 percent of the workers in agriculture covered as well.

The QCEW program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the six-digit North American Industry Classification System (NAICS) level, and at the national, State, MSA, and county levels. The QCEW series has broad economic

significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Action

Office of Management and Budget clearance is being sought for the Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program is implementing improvements to the methods used to impute data for missing employer reports starting in October 2020. The current method of imputation estimates the current month's employment or current quarterly wages by applying the change from a year earlier to the previous month's reported employment and/or quarterly wages. A drawback to this procedure is that it uses the data from a year earlier, which may not reflect current economic conditions. BLS anticipates that the number of non-responding employers will be substantially higher than usual in the second quarter of 2020, as a result of the business response to the coronavirus (COVID-19) pandemic. Existing imputation methods would likely understate the impact of the pandemic on the US economy. BLS has conducted research on improvements to its imputation methodology and will implement these improvements with the first release of data for the second quarter of 2020.

The QCEW program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State UI laws and the Unemployment Compensation for the Federal Employees program. The consequences of not collecting QCEW data would be grave to the Federal statistical community. The BLS would not have a sampling frame for its establishment surveys; it would not be able to publish as accurate current estimates of employment for the US, States, and metropolitan areas; and it would not be able to publish quarterly census totals of local establishment counts, employment, and wages. The Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas. Finally, the Department of Labor's Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, 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.

Title of Collection: Quarterly Census of Employment and Wages (QCEW) Program.

OMB Number: 1220-0012.

Type of Review: Revision of a currently approved collection.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 3,875 hours.

Estimated Total Burden Hours:

821,600 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, October 2, 2020.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2020-22366 Filed 10-8-20; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of "Cognitive and Psychological Research." A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before December 8, 2020.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics' Behavioral Science Research Center (BSRC) conducts theoretical, applied, and evaluative research aimed at improving the quality of data collected and published by the Bureau. Since its creation in 1988, the BSRC has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and methods of the cognitive, statistical, and social sciences. The BSRC research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training, the interaction between interviewer and respondent in the interview process, and the usability of data-collection instruments by both interviewers and respondents. Improvements in these areas result in greater accuracy and response rates of BLS surveys,

frequently reduce costs in training and survey administration, and further ensure the effectiveness of the Bureau's overall mission.

II. Current Action

Office of Management and Budget clearance is being sought for "Cognitive and Psychological Research." The purpose of this request for clearance by the BSRC is to conduct cognitive and psychological research designed to enhance the quality of the Bureau's data collection procedures and overall data management. The BLS is committed to producing the most accurate and complete data within the highest quality assurance guidelines. The BSRC was created to aid in this effort and it has demonstrated the effectiveness and value of its approach. Over the next few years, demand for BSRC consultation is expected to remain high as approaches are explored and tested for dealing with increasing nonresponse in key Bureau surveys. Moreover, as the use of web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and the impact of multiple modes on data quality. The BSRC is uniquely equipped with both the skills and facilities to accommodate these demands.

The extension of the accompanying clearance package reflects an attempt to accommodate the increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRC. This package reflects planned research and development activities for FY2021 through FY2023, and its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, 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.

Title of Collection: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Private Sector.

Total Respondents: 8,133.

Frequency: One time.

Total Responses: 8,133.

Average Time per Response: 20.66 minutes.

Estimated Total Annual Burden Hours: 2,800 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of October 2020.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2020–22462 Filed 10–8–20; 8:45 am]

BILLING CODE 4510–24–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2022–2024 IMLS Native Hawaiian Library Services Grant Program Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation 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. By this notice, IMLS is soliciting comments concerning a plan to offer a grant program targeted to the needs of Native Hawaiian libraries, aligned to the updated IMLS strategic plan for FY2018–2022—IMLS Native Hawaiian Library Services Grant Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 4, 2020.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, by email at cbodner@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony D. Smith, Associate Deputy Director for Discretionary Programs, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Smith can be reached by telephone at 202–653–4716, by email at asmith@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comment that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological

collection techniques, or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit www.imls.gov.

II. Current Actions

The purpose of this collection is to support existing Native Hawaiian library operations and maintain core library services, particularly as they relate to the following goals in the Museum and Library Services Act (20 U.S.C. 9141).

1. Expanding services for learning and access to information and educational resources in a variety of formats (including new and emerging technology), in all types of libraries, for individuals of all ages in order to support such individuals' need for education, lifelong learning, workforce development, economic and business development, health information, critical thinking skills, digital library skills, and financial literacy and other types of literacy skills.
2. Establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in 20 U.S.C. 9134(b)(6), for the purpose of improving the quality of and access to library and information services.
3. Providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services; and enhancing efforts to recruit future professionals, including those from diverse and underrepresented backgrounds, to the field of library and information services.
4. Developing public and private partnerships with other agencies, tribes, and community-based organizations.
5. Targeting library services to individuals of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to individuals with limited functional literacy or information skills.

6. Targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with 42 U.S.C. 9902(2)) applicable to a family of the size involved.

7. Developing library services that provide all users access to information through local, State, regional, national, and international collaborations and networks.

8. Carrying out other activities consistent with the purposes of the Library Services and Technology subchapter of the IMLS statute (20 U.S.C. 9121). Nonprofit organizations that primarily serve and represent Native Hawaiians (as the term is defined in 20 U.S.C. 7517) are eligible to apply for funding under the Naive Hawaiian Library Program.

This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2022–2024 IMLS Native Hawaiian Library Services Grant Program Notice of Funding Opportunity.

OMB Number: 3137–0102.

Frequency: Once per year.

Affected Public: Nonprofit organizations serving Native Hawaiians.

Number of Respondents: 7.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 280 hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: October 6, 2020.

Kim Miller,

*Senior Grants Management Specialist,
Institute of Museum and Library Services.*

[FR Doc. 2020–22393 Filed 10–8–20; 8:45 am]

BILLING CODE 7036–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2022–2024 IMLS Native American Library Services Basic Grant Program Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation 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. By this notice, IMLS is soliciting comments concerning a plan to offer a grant program targeted to the needs of Native American libraries, aligned to the updated IMLS strategic plan for FY2018–2022, IMLS Native American Library Services Basic Grant Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 4, 2020.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, by email at cbodner@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony D. Smith, Associate Deputy Director for Discretionary Programs,

Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Smith can be reached by telephone: 202–653–4716, by email at asmith@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

IMLS is particularly interested in public comment that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit www.imls.gov.

II. Current Actions

The purpose of this collection is to support existing Native American library operations and maintain core library services, particularly as they relate to the following goals in the Museum and Library Services Act (20 U.S.C. 9141).

1. Expanding services for learning and access to information and educational resources in a variety of formats (including new and emerging technology), in all types of libraries, for individuals of all ages in order to support such individuals' need for education, lifelong learning, workforce development, economic and business development, health information,

critical thinking skills, digital library skills, and financial literacy and other types of literacy skills.

2. Establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in 20 U.S.C. 9134(b)(6), for the purpose of improving the quality of and access to library and information services.

3. Providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services; and enhancing efforts to recruit future professionals, including those from diverse and underrepresented backgrounds, to the field of library and information services.

4. Developing public and private partnerships with other agencies, tribes, and community-based organizations.

5. Targeting library services to individuals of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to individuals with limited functional literacy or information skills.

6. Targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with 42 U.S.C. 9902(2)) applicable to a family of the size involved.

7. Developing library services that provide all users access to information through local, State, regional, national, and international collaborations and networks.

8. Carrying out other activities consistent with the purposes of the Library Services and Technology subchapter of the IMLS statute (20 U.S.C. 9121).

Nonprofit organizations that primarily serve and represent Native Hawaiians (as the term is defined in 20 U.S.C. 7517) are eligible to apply for funding under the Naïve Hawaiian Library Program.

This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2022–2024 IMLS Native American Library Services Basic Grant Program Notice of Funding Opportunity.

OMB Number: 3137–0093.

Frequency: Once per year.

Affected Public: Federally recognized tribes.

Number of Respondents: 233.

Estimated Average Burden per

Response: 10 hours.

Estimated Total Annual Burden: 2,330 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: October 6, 2020.

Kim Miller,

*Senior Grants Management Specialist,
Institute of Museum and Library Services.*

[FR Doc. 2020–22392 Filed 10–8–20; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request for NSF INCLUDES National Network Survey.

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.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: 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.

Title of Collection: NSF INCLUDES National Network Survey.

OMB Number: 3145–NEW.

Proposed Project: In 2016, the National Science Foundation (NSF) unveiled a set of “Big Ideas,” 10 bold, long-term research and process ideas that identify areas for future investment at the frontiers of science and engineering (see https://www.nsf.gov/news/special_reports/big_ideas/index.jsp). The Big Ideas represent unique opportunities to position our Nation at the cutting edge of global science and engineering leadership by bringing together diverse disciplinary perspectives to support convergence research.

The NSF INCLUDES Big Idea is a comprehensive national initiative to enhance U.S. leadership in science, technology, engineering, and mathematics (STEM) discoveries and innovations focused on NSF's commitment to diversity, inclusion, and broadening participation in these fields. The vision of NSF INCLUDES is to catalyze the STEM enterprise to work collaboratively for inclusive change, resulting in a STEM workforce that reflects the population of the Nation.

More specifically, NSF INCLUDES seeks to improve collaborative efforts aimed at enhancing the preparation, increasing the participation, and ensuring the contributions of individuals from groups that have been historically underrepresented and underserved in the STEM enterprise such as African Americans, Alaska Natives, Hispanics, Native Americans, Native Hawaiians, Native Pacific Islanders, persons with disabilities, persons from economically disadvantaged backgrounds, and women and girls. Significant advancement in the inclusion of underrepresented groups in STEM will result in a new generation of STEM talent and leadership to secure our nation's future and long-term economic competitiveness.

A hallmark of NSF INCLUDES is the focus on the five design elements of

collaborative infrastructure to achieve systemic change. Collaborative infrastructure refers to the process by which partnering organizations come together to map out mutually reinforcing activities through: (1) Shared vision, (2) partnerships, (3) goals and metrics, (4) leadership and communication, and (5) expansion, sustainability and scale. Through these five design elements of collaborative infrastructure, the successful implementation of NSF INCLUDES will result in substantial advances toward a diverse, innovative, and well-prepared STEM workforce to support our Nation's economy and continued U.S. leadership in the global STEM enterprise. It is anticipated that NSF's investment will contribute to new and improved STEM career pathways, policies, opportunities to learn, and practices for equity and inclusion.

The initiative is supported by the NSF INCLUDES Coordination Hub (www.includesnetwork.org) that provides a framework for communication and networking, network assistance and reinforcement, and visibility and expansion for the NSF INCLUDES National Network as a whole. The Hub leads and supports the National Network, working to (1) facilitate the sharing of promising practices and data for broadening participation in STEM, (2) contribute to the knowledge base on broadening participation in STEM through research, and (3) establish a framework for communications and networking among partners, as well as across the National Network.

NSF is requesting OMB approval for the NSF INCLUDES Coordination Hub to collect information from members of the NSF INCLUDES National Network. The NSF INCLUDES Coordination Hub seeks to collect feedback data from Network members to help inform Hub activities, assess the development and health of the NSF INCLUDES National Network, and begin tracking progress against the Hub's theory of action for building a collaborative infrastructure at the Network level. The purpose of the collection is to allow Network members to provide feedback on Coordination Hub support to date and to identify support needs in the coming year and collect data that will inform the Hub's shared measures work and network support and expansion goals. This information will be used by the Hub to refine its activities in support of the Network and to share with Network members. The NSF INCLUDES National Network is composed of:

- NSF INCLUDES grantees
- Other NSF funded projects,

- Federal Coordination in STEM (FC-STEM) agencies,
- Scholars engaged in broadening participation research, and
- Organizations that support the development of talent from all sectors of society to build an inclusive STEM workforce.

Information collected will include name of the respondents, their affiliated organizations, email addresses, and home states. These personal identifiable information (PII) are collected primarily to categorize responses based on respondents' roles in the NSF INCLUDES National Network. These PII data will be accessed only by the Coordination Hub. Any public reporting of data will be in aggregate form, and any personal identifiers will be removed.

Use of the Information: The information collected is primarily for the use of the NSF INCLUDES Coordination Hub to understand the utility of the network in supporting their project success, and for informing design decisions the Coordination Hub will make regarding future programming and support provided to network members.

Estimate burden on the public: Estimated at 550 hours per year for the life of the Coordination Hub's cooperative agreement with NSF.

Respondents: Members of the NSF INCLUDES National Network. The NSF INCLUDES National Network is comprised of individuals who are interested in or working directly to broaden participation in STEM. Some of these individuals are NSF INCLUDES grantees; others who have received other NSF awards, or pursue broadening participation in STEM with support from other sources, including grants from federal, state, philanthropic, or business entities. Some are themselves representatives of these various types of funders or businesses, such as program officers at NSF, other Federal agencies, and private foundations.

Estimated number of respondents: 1,500.

Average Time per Reporting: 20 minutes.

Frequency: Once per year.

Comments: Comments are invited on: (a) 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; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated

collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email. Comments, including any personal information provided become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

Dated: October 6, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020-22417 Filed 10-8-20; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316; NRC-2020-0178]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an April 7, 2020 request from Indiana Michigan Power Company (I&M, the licensee). The issuance of the exemption would permit I&M to align the regulatory requirements for reporting frequency with the current Final Safety Analysis Report update frequency for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2.

DATES: The exemption was issued on October 1, 2020.

ADDRESSES: Please refer to Docket ID NRC-2020-0178 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0178. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges;

telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-2855; email: Scott.Wall@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: October 2, 2020.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-315 and 50-316

Indiana Michigan Power Company

Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 Exemption

I. Background

The Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (CNP), is a two-unit nuclear power plant located in Berrien County, Michigan. Indiana Michigan Power Company (I&M, the licensee) holds Renewed Facility Operating License Nos. DPR-58 and DPR-74 for CNP. These licenses are subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission).

II. Request/Action

By letter dated April 7, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20126G456), I&M requested an exemption from requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section

54.37, "Additional records and recordkeeping requirements," and 10 CFR 50.54, "Conditions of licenses," specifically with respect to their references to 10 CFR 50.71, "Maintenance of records, making of reports," paragraph (e).

10 CFR 50.71(e)(4) states, in part, that "Subsequent revisions [to the final safety analysis report (FSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months." The two CNP units share a common FSAR; therefore, this rule requires the licensee to update that same document within 6 months after a refueling outage for either unit. By letter dated March 3, 1998 (ADAMS Accession No. ML021090203), the NRC granted I&M an exemption from 10 CFR 50.71(e)(4) for CNP, which allowed the licensee to submit FSAR updates after each Unit No. 1 refueling outage, not to exceed 24 months between successive updates. This exemption was granted before renewed licenses were issued for CNP.

10 CFR 54.37(b) states, in part:

After the renewed license is issued, the FSAR update required by 10 CFR 50.71(e) must include any systems, structures, and components newly identified that would have been subject to an aging management review or evaluation of time-limited aging analyses in accordance with [10 CFR] 54.21.

10 CFR 50.54(a)(3) states, in part:

Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of [10 CFR] 50.71(e).

The references in 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) to 10 CFR 50.71(e) can be interpreted to include the reporting frequency prescribed in 10 CFR 50.71(e)(4). If interpreted in this way, 10 CFR 54.37(b) would require information related to newly identified systems, structures, and components at CNP that are subject to an aging management review or evaluation of time-limited aging analyses, and 10 CFR 50.54(a)(3) would require changes to the quality assurance program description that do not reduce the commitments, to be submitted to the NRC "annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months," despite the NRC's March 3, 1998 approval of an exemption from 10 CFR 50.71(e)(4) for CNP. The exemption that I&M now requests from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) would permit I&M to align the reporting frequency of these requirements with the CNP FSAR update frequency

permitted by the March 3, 1998 exemption.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule and

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

10 CFR 54.15 states that exemptions from the requirements of 10 CFR part 54 may be granted by the Commission in accordance with 10 CFR 50.12.

A. Authorized by Law

The requested exemption from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) would permit I&M to align the reporting frequency of these requirements with the CNP FSAR update frequency permitted by the March 3, 1998 exemption. As stated above, 10 CFR 50.12 and 10 CFR 54.15 allow the NRC to grant exemptions from the requirements of 10 CFR parts 50 and 54 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. No Undue Risk to the Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their FSARs so that they accurately reflect the plant design and operation, which includes changes required pursuant to 10 CFR 54.37(b) and 10 CFR 50.54(a)(3). The NRC has determined by rule that a frequency not exceeding 24 months between successive updates is acceptable for maintaining FSAR content up-to-date. The requested exemption would provide an equivalent level of protection to the existing requirements

because it ensures that updates to the CNP FSAR are submitted with no greater than 24 months between successive updates. The requested exemption would also meet the intent of the rule with respect to regulatory burden reduction. Additionally, based on the nature of the requested exemption and the fact that updates will not exceed 24 months from the last submittal as described above, no new accident precursors would be created by the exemption; therefore, neither the probability nor the consequences of postulated accidents would be increased. In conclusion, the requested exemption will not present an undue risk to the public health and safety.

C. Consistent With the Common Defense and Security

The requested exemption from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) with respect to their references to 10 CFR 50.71(e) would allow I&M to continue to submit its periodic updates to the CNP FSAR within 6 months after each CNP, Unit No. 1 refueling outage, not to exceed 24 months from the last submittal. Neither these regulations nor the proposed exemption thereto has any relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) is to ensure that licensees periodically update their FSARs with changes required by these regulations so that the FSARs remain up-to-date and accurately reflect the plant design and operation. As previously described, the references in 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) to 10 CFR 50.71(e) can be interpreted to include the reporting frequency prescribed in 10 CFR 50.71(e)(4). If interpreted in this way, strict compliance with the 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) reporting requirements at CNP, where the FSAR is updated at a frequency permitted by the March 3, 1998 exemption, would create a disconnect between these report updates and the FSAR update. Specifically, since CNP is a dual-unit facility with a single shared FSAR and staggered refueling outages, application of the phrase "after each refueling outage" in 10 CFR 50.71(e)(4), as it relates to 10 CFR 54.37(b) and 10 CFR 50.54(a)(3), would result in more

frequent report updates than are necessary to achieve the underlying purpose of the rule. Therefore, special circumstances are present per 10 CFR 50.12(a)(2)(ii).

E. Environmental Considerations

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR Chapter I (which includes 10 CFR 54.37 and 10 CFR 50.54) is an action that is a categorical exclusion, provided that:

- (i) There is no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
- (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;
- (iv) There is no significant construction impact;
- (v) There is no significant increase in the potential for or consequences from radiological accidents; and
- (vi) The requirements from which an exemption is sought involve:
 - (A) Recordkeeping requirements;
 - (B) Reporting requirements;
 - (C) Inspection or surveillance requirements;
 - (D) Equipment servicing or maintenance scheduling requirements;
 - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
 - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;
 - (G) Scheduling requirements;
 - (H) Surety, insurance or indemnity requirements; or
 - (I) Other requirements of an administrative, managerial, or organizational nature.

The NRC staff's determination that all of the criteria for this categorical exclusion are met is as follows:

I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application. Therefore, there are no significant hazards considerations because granting the exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of any effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in individual or cumulative public or occupational radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature and does not impact the potential for or consequences from radiological accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which the exemption is sought involve scheduling requirements and other requirements of an administrative, managerial, or organizational nature.

Staff Analysis: The proposed action involves scheduling requirements and other requirements of an administrative, managerial, or organizational nature because it is associated with the requirement in 10 CFR 50.71(e)(4), which stipulates that revisions to the FSAR must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR

51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

The NRC has determined that, pursuant to 10 CFR 50.12 and 10 CFR 54.15, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants I&M an exemption from the requirements of 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) with respect to their references to 10 CFR 50.71(e) to allow I&M to continue to submit its periodic updates to the CNP FSAR within 6 months after each CNP, Unit No. 1 refueling outage, not to exceed 24 months from the last submittal.

This exemption is effective upon issuance.

Dated: October 1, 2020.

For the Nuclear Regulatory Commission.
David J. Wrona,
Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020-22231 Filed 10-8-20; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237 and 50-249; NRC-2020-0223]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption from regulatory requirements for Dresden Nuclear Power Station, Units 2 and 3, in response to a October 21, 2019, request from Exelon Generation Company, LLC in order to permit exclusion of main steam isolation valve (MSIV) leakage from the overall integrated leak rate Type A test measurement, and MSIV pathway leakage contributions from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests.

DATES: The exemption was issued on October 5, 2020.

ADDRESSES: Please refer to Docket ID NRC-2020-0223 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0223. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

FOR FURTHER INFORMATION CONTACT: Russell S. Haskell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1129, email: Russell.Haskell@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: October 5, 2020.

For the Nuclear Regulatory Commission.
Russell S. Haskell,
Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-237 and 50-249

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3

Exemption

I. Background

Exelon Generation Company, LLC (EGC, the licensee) is the holder of Facility Operating License Nos. DPR-19 and DPR-25, which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3 (DNPS). The licenses provide, among other things, that the facilities are subject to the rules,

regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facilities each consist of a boiling, light-water reactor located in Grundy County, Illinois.

II. Request/Action

In its letter dated October 21, 2019, as supplemented by letters dated May 6, 2020, and August 24, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML19294A304, ML20127H891, and ML20237F317, respectively), EGC requested a permanent exemption from the Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix J, Option B, Section III.A requirements in order to permit exclusion of main steam isolation valve (MSIV) leakage from the overall integrated leak rate Type A test measurement, and from Option B, Section III.B, requirements to permit exclusion of the MSIV pathway leakage contributions from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. EGC also requested a revision to Technical Specification (TS) 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," Surveillance Requirement (SR) 3.6.1.3.10, that would revise the single and combined MSIV leakage rate limits; an addition of a new TS 3.6.2.6, "Drywell Spray," to reflect the crediting of drywell spray for fission product removal; and a revision to TS 3.6.4.1, "Secondary Containment," SR 3.6.4.1.1, to address short-duration conditions during which the secondary containment pressure may not meet the SR pressure requirement at DNPS. The license amendment requests are addressed separately.

Under Part 50 of 10 CFR, paragraph 50.54(o), primary reactor containments for water-cooled power reactors are subject to the requirements of Appendix J to 10 CFR part 50. Appendix J specifies the leakage rate test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the reactor containment and systems and components that penetrate the containment. Option B of 10 CFR 50, Appendix J, "Performance-Based Requirements," paragraph III.A, "Type A Test," requires, among other things, that the overall integrated leakage rate must not exceed the allowable leakage rate (L_a) with margin, as specified in the TSs. The overall integrated leakage rate is defined in 10 CFR part 50, Appendix J, as "the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system." This includes the

contribution through the four main steam lines where each line contains two MSIVs in series. Paragraph III.B, "Type B and C Tests," requires, among other things, that the sum of the leakage rates of Type B and Type C local leakage rate tests be less than the performance criterion (L_a) with margin as specified in the TSs. The allowable leakage rates set in the TSs ensure that the required dose limits, such as in 10 CFR 50.67, "Accident source term," will not be exceeded.

This requested exemption concerns the main steam system, which penetrates containment. The radiological consequences of MSIV leakage are modeled as a separate primary containment release path to the environment that bypasses secondary containment because MSIV leakage is not filtered through the standby gas treatment system like other containment leakage. The design-basis LOCA dose calculation assumes all MSIV leakage migrates to the turbine building and then to the environment. By currently including the main steam pathway leakage with the rest of the primary containment leakage test results, it is being accounted for twice: once as part of the actual containment leakage and again as part of the MSIV leakage used in the LOCA dose calculations.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances as described in 10 CFR 50.12(a)(2)(i)-(vi) are present. The licensee asserted that special circumstances are present under 10 CFR 50.12(a)(2)(ii) because the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The licensee submitted this exemption request as part of a license amendment request to increase the allowable MSIV leakage rate, which if approved, would permit an increase in allowable MSIV leakage rate that is excluded from the overall integrated leak rate Type A test measurement and excluded from the combined Type B and Type C test total. The licensee described its view on the special circumstances associated with the MSIV leakage path testing in its application dated October 21, 2019.

A. The Exemption Is Authorized by Law

This exemption permits exclusion of the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

Type A tests to measure the containment system overall integrated leakage rate must be conducted under conditions representing design-basis LOCA containment peak pressure. Type B pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage-limiting boundaries, and Type C pneumatic tests to measure containment isolation valve leakage rates, must be conducted to ensure the integrity of the overall containment system as a barrier to fission product release to reduce the risk from reactor accidents.

In license Amendment Nos. 221 and Amendment 212 dated September 11, 2006 (ADAMS Accession No. ML062070290), the NRC approved the use of the alternative source term (as prescribed in 10 CFR 50.67) in the calculations of the radiological dose consequences of design-basis accidents, including the design-basis LOCA, for DNPS. The NRC staff's safety evaluation accompanying these amendments acknowledged that once fission products are dispersed in the primary containment, their release to the environment is assumed to occur through three pathways: (1) The leakage of primary containment atmosphere; (2) the leakage of primary containment atmosphere through MSIVs; and (3) the leakage from emergency core cooling systems that recirculate suppression pool water outside of the primary containment. As noted above, however, leakage through the MSIVs is considered a separate pathway and is calculated as a separate contributor to the dose consequence analysis. As such, the inclusion of MSIV leakage as part of Type A and as part of Type B and C test results is not necessary to ensure the actual radiological consequences of design-basis accidents remain below the regulatory limit.

The proposed exemption does not create any new accident precursors. Therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not significantly changed from the previously evaluated consequences associated with the design-basis LOCA as described in the alternative source term amendments. Therefore, there is no undue risk to public health and safety.

C. The Exemption is Consistent With the Common Defense and Security

The proposed exemption excludes the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. This change to accounting for leakage rate measurement has no relation to security issues. Therefore, the exemption is consistent with the common defense and security.

D. Special Circumstances

Under 10 CFR 50.12(a)(2)(ii) special circumstances include when, "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The test requirements in Appendix J to 10 CFR part 50 ensure that leakage through containments or systems and components penetrating containments does not exceed allowable leakage rates specified in the technical specifications, and integrity of the containment structure is maintained during its service life. Option B of Appendix J identifies the performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing.

The licensee has analyzed the main steam pathway leakage separately from the overall containment integrated leakage; the local leakage across pressure-containing or leakage-limiting boundaries; and the containment isolation valve leakage in its dose consequence analyses. The dose consequences were found to be within the applicable acceptance criteria in 10 CFR 50.67, "Accident source term," and the guidance of NRC Regulatory Guide 1.183, Revision 0, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," dated July 2000 (ADAMS Accession No. ML003716792). The staff has reviewed the licensee's analysis and determined that the dose consequences of implementing the proposed change are

below the applicable acceptance criteria and the containment leaks will continue to be limited by the DNPS TSs.

Therefore, because the underlying purposes of 10 CFR part 50, Appendix J, are still achieved, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR part 50, Appendix J, Option B, Sections III.A and III.B, exist.

E. Environmental Considerations

The NRC staff determined that the issuance of the requested exemption meets the provisions of categorical exclusion 10 CFR 51.22(c)(25) because there is: (i) No significant hazards consideration; (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) no significant increase in individual or cumulative public or occupational radiation exposure; (iv) no significant construction impact; (v) no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve inspection or surveillance requirements. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption. The basis for the NRC staff's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve “no significant hazards consideration.” The NRC staff evaluated whether the exemption involves no significant hazards consideration by using the standards in 10 CFR 50.92(c), as presented below:

1. Does the requested exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption would permit exclusion of the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests. The leakage of primary containment atmosphere through MSIVs is accounted for as a separate contributor to the design-basis LOCA dose consequence analysis. This exemption will allow the leakage testing to be performed in a manner consistent

with the way MSIV leakage is modeled in the revised radiological consequence analysis submitted as part of the related license amendment request submitted in the letter dated October 21, 2019, as supplemented by letter dated May 6, 2020. This change to the leakage rate measurement does not increase the probability or consequences of an accident previously evaluated.

Therefore, the exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the requested exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed exemption does not involve a physical modification to the plant (*i.e.*, no new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed change). Similarly, it does not physically change any structures, systems, or components involved in the mitigation of any accidents.

Therefore, the exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the requested exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed exemption does not alter a design basis or safety limit nor cause a limit to be exceeded. The proposed exemption allows the results of the TS required MSIV leakage pathway tests to no longer be accounted for as part of the overall integrated leakage rate Type A test measurement and as part of the sum of the local leakage rates from Type B and Type C tests. This change only affects which leakage rates are included in the Types A, B, and C results. This exemption will allow the leakage testing to be performed in a manner consistent with the way MSIV leakage is modeled in the revised radiological consequence analysis submitted as part of the related license amendment request.

Therefore, the exemption does not involve a significant reduction in a margin of safety.

Based on the evaluation above, the NRC staff has determined that the proposed exemption involves no significant hazards consideration. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(ii), the

exemption must result in “no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.” The proposed exemption allows the results of the TS-required MSIV leakage pathway tests to be accounted for only as part of the design-basis LOCA consequence analysis. This change only affects the total in which the leakage rates are included and does not change the frequency or pressure at which the testing must be performed. The underlying purpose of 10 CFR part 50, Appendix J, is to demonstrate by periodic testing and visual inspection that the primary reactor containment will be able to perform its function of providing an essentially leak-tight barrier against uncontrolled release of radioactivity to the environment. The inclusion of the MSIV leakage testing results in the design-basis LOCA serves the same purpose as the inclusion in the rate Type A test measurement and the sum of the leakage rates from Type B and Type C tests required by Appendix J, Option B, paragraphs III.A and III.B. Therefore, the proposed exemption will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) are met.

Requirements in 10 CFR 51.22(c)(25)(iii)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(iii), the exemption must result in “no significant increase in individual or cumulative public or occupational radiation exposure.” The proposed exemption permits the exclusion of the MSIV leakage pathway results from the Type A test measurement and the sum of the leakage rates from Type B and Type C tests required by Appendix J, Option B, paragraphs III.A and III.B, and has no impact on, or change to, fuel or core design. Additionally, the TSs still require that the MSIV leakage rates be tested and maintained below set limits. As such, the calculated public and occupational doses will remain essentially the same. Therefore, the proposed exemption will not significantly increase individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(iii) are met.

Requirement in 10 CFR 51.22(c)(25)(iv)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(iv), the exemption must result in “no significant construction impact.” The exemption does propose any changes to the site,

alter the site, or change the operation of the site. Therefore, there is no significant construction impact. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met.

Requirement in 10 CFR 51.22(c)(25)(v)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(v), the exemption must involve “no significant increase in the potential for or consequences from radiological accidents.” The proposed exemption does not remove the requirement to perform leakage rate testing of the MSIVs. This exemption will allow the leakage testing to be performed in a manner consistent with the way MSIV leakage is modeled in the revised radiological consequence analysis submitted as part of the related license amendment request. Therefore, this change to the leakage rate measurement does not result in a significant increase in the potential for or consequences from radiological accidents. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirement in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(C), the exemption must involve inspection or surveillance requirements. The exemption seeks to permit exclusion of the MSIV leakage from the overall integrated leak rate Type A test measurement and the combined leakage rate of all penetrations and valves subject to Type B and Type C tests required by Appendix J to 10 CFR part 50. Appendix J specifies the leakage rate test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the reactor containment, and systems and components that penetrate the containment. Therefore, the exemption involves a surveillance requirement. Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC’s issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to

the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants EGC a permanent exemption (1) from the requirements of 10 CFR part 50, Appendix J, Option B, Section III.A, to allow exclusion of the MSIV pathway leakage from the overall integrated leakage rate measured when performing a Type A test; and (2) from the requirements of 10 CFR part 50, Appendix J, Option B, Section III.B, to allow exclusion of the MSIV pathway leakage from the combined leakage rate of all penetrations and valves subject to Types B and C tests for DNPS.

This exemption is effective upon issuance.

Dated: 5th day of October 2020.

For the Nuclear Regulatory Commission.

David J. Wrona,
Acting Deputy Director, Division of Operating
Reactor Licensing Office of Nuclear Reactor
Regulation.

[FR Doc. 2020–22371 Filed 10–8–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–4 and CP2021–4;
MC2021–5 and CP2021–5; MC2021–6 and
CP2021–6; MC2021–7 and CP2021–7;
MC2021–8 and CP2021–8]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 15, 2020.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2021–4 and CP2021–4; *Filing Title:* USPS Request to Add Priority Mail Contract 668 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Kenneth R. Moeller; *Comments Due:* October 15, 2020.

2. *Docket No(s):* MC2021-5 and CP2021-5; *Filing Title:* USPS Request to Add Priority Mail Contract 669 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2020.

3. *Docket No(s):* MC2021-6 and CP2021-6; *Filing Title:* USPS Request to Add Priority Mail Contract 670 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2020.

4. *Docket No(s):* MC2021-7 and CP2021-7; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 171 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2020.

5. *Docket No(s):* MC2021-8 and CP2021-8; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 172 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2020-22429 Filed 10-8-20; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34043; 812-15164]

Development Bank of Japan Inc.

October 5, 2020.

AGENCY: Securities and Exchange Commission (the “Commission”).

ACTION: Notice.

Notice of application for an order under section 6(c) of the Investment

Company Act of 1940 (“Act”) for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant, a policy and development finance organization established by the government of Japan (the “Japanese Government”), requests an order exempting it from all provisions of the Act in connection with the offer and sale of its debt securities in the United States.

APPLICANT: Development Bank of Japan Inc. (“Applicant”).

FILING DATES: The application was filed on September 25, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov* and serving applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2020, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicant: *grp_dbond@dbj.jp*.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicant’s Representations

1. The Applicant is a policy and development finance organization established in October 2008 by the Japanese Government pursuant to the Development Bank of Japan Inc. Act (the “DBJ Act”). The Applicant’s primary mission is contributing to the

sustainable growth of the Japanese economy, promoting stable and vital financial markets in Japan and enhancing global competitiveness of Japanese businesses. The Applicant furthers its mission primarily through the provision of long-term funding to enterprises and projects generally in line with the policy objectives of the Japanese Government, through loan financing and other financing methods (including equity investments).

2. In serving its mission, the Applicant offers a broad range of financial products and services to its clients similar to those offered by Japanese commercial banks. In recent years, the Applicant has also undertaken specific mandates in two key Japanese Government-sponsored funding initiatives: (i) “Crisis Response Operations,” a program designed to provide appropriate financing to large- and medium-sized enterprises that are temporarily experiencing a downturn in business performance and funding difficulties due to a “crisis” such as turmoil in the domestic or global financial system, large-scale natural disasters, acts of terrorism or medical epidemics, and (ii) “Special Investment Operations,” a temporary investment program designed to supplement and encourage private-sector financing to support growth initiatives of enterprises that contribute to self-reliant development of regional economies, contribute to development of markets for growth capital, or promote the competitiveness of Japanese enterprises generally.

3. As of March 31, 2020, the Applicant’s most recently completed fiscal year end, a majority of the Applicant’s assets consisted of loans and other securities such as equity in other entities and a variety of debt instruments. Because such loans and securities could be considered “investment securities” within the meaning of section 3(a)(1)(C) of the Act, the Applicant may be considered an investment company, and it requests an exemption from all provisions of the Act.

4. The Japanese Government currently owns 100% of the Applicant’s issued share capital. However, the DBJ Act (including successive amendments thereto) contemplates a plan to fully privatize the Applicant over time. Specific timing for commencing or completing the Applicant’s privatization has not been determined, and under partial amendments to the DBJ Act effective in 2015, the Japanese Government is obligated to hold more than one-half of the total issued share capital of the Applicant until the

completion of its Special Investment Operations, which is currently scheduled for March 31, 2031, and more than one-third of the Applicant's issued share capital for an indefinite period with a view to ensuring the sufficient and appropriate implementation of the Crisis Response Operations. The Applicant notes that the anticipated privatization of the Applicant, as set forth in the DBJ Act, is a part of broader efforts to reform and streamline policy finance and special public institutions in Japan, such as the Applicant, that began in the early 2000s.

5. As described more fully in the application, the Applicant, as a development bank, is substantially engaged in banking activity that is customary for commercial banks in Japan. However, because the Applicant does not engage in deposit-taking activities, it is not considered a commercial bank under Japanese law. Despite the formal differences in applicable rules and regulations, the Applicant believes that it is subject to a set of regulatory requirements that, in combination with the Applicant's voluntary policies, are functionally equivalent to that applied to Japanese commercial banks in terms of the regulation of a bank's safety and soundness and financial risk exposures. The Applicant believes the DBJ Act's supervisory provisions, combined with supplemental oversight by multiple Japanese government agencies and regulatory authorities and the Applicant's voluntary compliance with key prudential regulatory metrics, constitute a set of regulatory protections that meet or exceed those applicable to Japanese commercial banks. In particular, the Applicant (i) is subject to extensive oversight, supervision and regulation by the Japanese Government, primarily by the Minister of Finance and the Commissioner of the Financial Services Agency (the "FSA") (Japan's umbrella financial regulator and primary bank regulator), including on-site inspections conducted by the FSA in a manner similar to those conducted for commercial banks in Japan (*i.e.*, in accordance with principles and procedures for bank examinations established in FSA guidance documents), (ii) maintains internal controls and risk management systems intended to be consistent with expectations set by the FSA, such as a credit quality "self-assessment" system, in line with domestic industry best practices, and (iii) voluntarily monitors and controls its balance sheet and risk exposures at levels that meet or exceed regulatory requirements applicable to

Japanese commercial banks as part of their prudential banking regulation, such as risk-based capital and leverage requirements under Basel III and credit quality disclosure standards under Japanese banking law.

6. The Applicant procures funds by borrowing from the Japanese Government and private financial institutions, issuing debt securities in the Japanese and international capital markets and accumulating funds through its business operations, primarily loan recoveries. The Applicant uses such funds to extend loans to and make other investments in primarily Japanese but also international enterprises and projects in order to fulfill its primary mission. In addition, since the Applicant's establishment in 2008, the Japanese Government has made capital contributions in the aggregate amount of ¥631.0 billion (approximately \$5.8 billion), primarily to fund the Crisis Response Operations and Special Investment Operations.

7. The Applicant proposes to issue and sell its debt securities not guaranteed by the Japanese Government in the United States, including under its Global Medium Term-Notes (GMTN) program, from time to time. The Applicant does not intend to offer, issue or sell any securities in public offerings under the Securities Act of 1933 (the "Securities Act"), and any offers or sales of its debt securities in the United States or to U.S. persons would be made in transactions exempt from the registration requirements of the Securities Act, including private placements to institutional accredited investors and transactions in which the securities may be resold to "qualified institutional buyers" as contemplated by rule 144A under the Securities Act. The Applicant intends to use the proceeds of any such issuance and sale of debt securities as an additional source of funding for its general operations as set forth in the DBJ Act and to extend loans, make investments and provide advisory and consulting services in line with its primary mission as a policy and development financial organization.

Applicant's Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an "investment company" to include any issuer engaged in the business of investing, reinvesting, owning, holding or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40% of the issuer's total assets. Section 3(a)(2) of the Act defines "investment securities" to include all securities

except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. The Applicant states that, as of March 31, 2020, it had total assets of ¥17,419,402 million (non-consolidated basis), of which loans accounted for ¥12,521,358 million (71.9%) and the Applicant's securities portfolio for ¥2,400,948 million (13.8%). Such loans and securities could be construed as "investment securities" within the meaning of section 3(a)(1)(C) of the Act, thus potentially rendering the Applicant a *prima facie* "investment company" under the Act. As a result, the Applicant could be deemed to be an "investment company" under section 3(a)(1)(C) of the Act.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act, if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Rule 3a-6 under the Act excludes foreign banks from the definition of an investment company under the Act. A "foreign bank" is defined in the rule to include a banking institution "engaged substantially in commercial banking activity" which in turn is defined to include "extending commercial and other types of credit, and accepting demand and other types of deposits." The Applicant represents that it is functionally similar to a "foreign bank" as defined under rule 3a-6, insofar as it (i) offers financial services and issues financial products similar to those offered and issued by traditional commercial banks and (ii) is subject to extensive oversight, supervision and regulation by the Japanese Government. However, because the Applicant does not engage in deposit-taking activities, it is not considered a commercial bank under Japanese law. Therefore, the Applicant states that there is uncertainty as to whether the rule 3a-6 exemption would be deemed to apply.

5. The Applicant also believes that the rationale of Congress and the Commission in promulgating rules under the Act in exempting foreign financial institutions applies to the Applicant. The Applicant represents

that it is subject to oversight by a suite of Japanese government agencies and regulatory authorities, and conducts its operations in a manner that is at least as rigorous as, if not more rigorous than, Japanese commercial banks subject to prudential bank regulatory financial standards. The Applicant is subject to a comprehensive supervisory and regulatory regime established by the Japanese Government as described in the application. The Applicant is subject to the general safety and soundness prudential supervision and regulation similar to that applicable to commercial banks in Japan pursuant to the DBJ Act, including on-site inspections conducted by the Commissioner of the FSA, which is also the primary supervisor of Japanese commercial banks via delegated authority under the Banking Act of Japan (the "Banking Act"). The Applicant also complies with certain of provisions of the Banking Act or the Act on Emergency Measures for the Revitalization of Financial Functions Act on a voluntary basis in a manner that is similar to a Japanese commercial bank as part of risk management processes and methods implemented and maintained by the Applicant in order to ensure sound and appropriate management of its operations. Accordingly, the Applicant represents that its operations do not lend themselves to the abuses against which the Act is directed, and states that it believes it satisfies the standards for relief under section 6(c) of the Act.

Applicant's Conditions

The Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. In connection with any offering by the Applicant of its debt securities in the United States, the Applicant will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to such debt securities instituted in any state or federal court in the Borough of Manhattan, The City of New York, New York. The Applicant will expressly submit to the jurisdiction of New York State and United States Federal courts sitting in the Borough of Manhattan, The City of New York, New York with respect to any such suit, action or proceeding. The Applicant also will waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect thereof have been paid. No such

submission to jurisdiction or appointment of agent for service of process will affect the right of a holder of any such security to bring suit in any court which shall have jurisdiction over the Applicant by virtue of the offer and sale of such securities or otherwise.

2. The Applicant undertakes to provide to any person to which it offers its debt securities in the United States disclosure documents that are at least so comprehensive in their description of the Applicant and its business as those which may be used by comparable U.S. issuers in similar U.S. offerings of such securities and that contain the latest available audited annual financial statements (and, if available, reviewed interim financial statements) of the Applicant. The Applicant further undertakes to ensure that any underwriter or dealer through whom it makes such offers will provide such disclosure documents to each person to whom such offers are made prior to any sale of securities to such offeree. Such documents will be updated promptly to reflect any material change in the Applicant's financial status and shall be at least as comprehensive as offering memoranda customarily used in similar offerings in the United States. Any offering of the Applicant's securities in the United States shall comply with applicable U.S. securities and anti-fraud laws and regulations.

3. The Applicant shall rely upon the order so long as (i) the Applicant's activities conform in all material respects to the activities described in the application, (ii) the Applicant continues to be regulated by the Minister of Finance, the FSA or other applicable Japanese regulatory authorities as a policy and development financial organization as described in the application, (iii) the Applicant continues to follow, in all material respects, the voluntary compliance measures described in the application, (iv) there is no material change in the Applicant's primary mission or how it is regulated as compared to today, and (v) the Japanese Government continues to hold at least 10% of the Applicant's issued share capital.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-22373 Filed 10-8-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 62361, October 2, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 7, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, October 7, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: October 7, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-22552 Filed 10-7-20; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 5607/ File No. 803-00253]

D.B. Fitzpatrick & Co., Inc.

October 6, 2020.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the "Act") and rule 206(4)-5(e) under the Act.

APPLICANT: D.B. Fitzpatrick & Co., Inc. ("Applicant").

SUMMARY OF APPLICATION: Applicant filed an application for an order under Section 206A of the Act and rule 206(4)-5(e) under the Act exempting it from rule 206(4)-5(a)(1) under the Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following contributions by a covered associate of the Applicant to an official of the government entity. The Commission issued a notice of application on April 9, 2020¹ ("Notice"). The Commission did not receive a hearing request and issued an order on May 5, 2020²

¹ Investment Advisers Act Release No. 5475 (Apr. 9, 2020) (notice).

² Investment Advisers Act Release No. 5946 (May 5, 2020) (order).

(“Order”) granting the requested exemption. Due to a clerical error, the Notice was not published in the **Federal Register** and, therefore, the Commission is now publishing this notice in the **Federal Register**. The Commission is also stating, as provided below, a related position with respect to this matter.

FILING DATES: The application was filed on January 22, 2020, and amended on March 23, 2020 (“Application”).

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing by emailing the Commission’s Secretary at Secretaries-Office@sec.gov and serving Applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2020, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by emailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicant: D.B. Fitzpatrick & Co., Inc. at dbfitzpatrick@dbfitzpatrick.com.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website at <http://www.sec.gov/rules/iareleases.shtml> or by calling (202) 551–8090.

Publication of Notice in the Federal Register

1. Applicant filed the Application to request an order pursuant to Section 206A of the Act and rule 206(4)–5(e) thereunder exempting Applicant from rule 206(4)–5(a)(1) under the Act to permit the Applicant to receive compensation from a government entity within the two-year period following contributions by a covered associate of the Applicant to an official of the government entity. The Commission published the Application on its public website shortly thereafter.

2. Based on the representations provided by the Applicant in the Application, the Commission issued the Notice on April 9, 2020, and published

it on the Commission’s public website on the same day. The Commission did not receive a hearing request. On May 5, 2020, the Commission issued the Order and published it on the Commission’s public website on the same day. The Commission understands that the Applicant is relying on the Order.

3. Because of a clerical error, the Notice was not published in the **Federal Register**. The Commission is thus publishing this notice in the **Federal Register**.

Commission Position

The Commission takes the position that it would not provide a basis for a Commission enforcement action under Section 206(4) of the Act and rule 206(4)–5(e) under the Act against the Applicant if, in reliance on the Order and subject to its conditions, the Applicant receives compensation from the government entity identified in the Application within the two-year period following the contributions addressed in the application. This position will apply with respect to payments received, or released from escrow, from May 5, 2020 until the notice period for hearing requests has expired. Applicant has represented that since May 5, 2020, it has complied with the conditions of the Order.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020–22455 Filed 10–8–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90092; File No. SR–NSCC–2020–017]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance the Insurance and Retirement Processing Services To Provide for a New Centralized Repository and Transactional Platform Called “Insurance Information Exchange” and Make Certain Clarification Changes to the NSCC Rules & Procedures

October 5, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

September 28, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act ³ and subparagraphs (f)(2) ⁴ and (f)(4) ⁵ of Rule 19b–4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC’s Rules & Procedures (“Rules”) ⁶ to enhance existing Insurance and Retirement Processing Services (“I&RS”) to (i) provide for a new centralized repository and transactional platform called “Insurance Information Exchange” (“IIEX”) for transmission of data relating to IPS Eligible Products (“I&RS Data”) ⁷ and (ii) update certain defined terms and the name of I&RS services in the Rules and make certain other clarification changes.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) *Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NSCC is proposing to provide a centralized repository and transactional platform to transmit and receive data relating to I&RS Data. NSCC is also proposing to update certain defined

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(2).

⁵ 17 CFR 240.19b–4(f)(4).

⁶ Capitalized terms not defined herein are defined in the Rules, available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁷ An “IPS Eligible Product” is currently defined in the Rules and includes such insurance products, retirement or other benefit plans, or programs that are identified by NSCC as eligible for processing through its I&RS. See Rule 1, *supra* note 6.

terms and the name of the I&RS services in the Rules to reflect conventional use of such terms and make certain other clarification changes.

(i) Background

IIEX

NSCC is proposing to provide I&RS Members (as defined below) and their service providers with a centralized data repository to transmit and receive I&RS Data. Such I&RS Members would include (i) insurance companies that are Insurance Carrier/Retirement Services Members (“Carriers”); and (ii) Carriers’ intermediaries, such as broker-dealers, banks and insurance agencies, that are Members, Mutual Fund/Insurance Services Members and Data Services Only Members that distribute participating Carriers’ insurance products (collectively, “Distributors,” and, together with “Carriers,” collectively referred to herein as “I&RS Members”). Some I&RS Members use third-party service providers to send or receive I&RS Data on their behalf. Such third-party service providers are not typically I&RS Members. I&RS Members authorize NSCC to send I&RS Data to the service providers or receive I&RS Data from the service providers on the I&RS Members’ behalf.

I&RS provides for transmission of I&RS Data, including annuity and life insurance policy applications and premiums, licensing and appointments, commission payments, reporting of client positions and valuations, asset pricing, financial activity reporting and annuity customer account transfers.⁸ I&RS also provides settlement of post-issue money/funding activities between Carriers and Distributors as well as between Carriers. The aim of these services is to automate and provide seamless end-to-end communication between Carriers, Distributors and their service providers for the sale, processing and money settlement of insurance products nationwide. NSCC does not act as a central counterparty with respect to I&RS services and I&RS services are not guaranteed by NSCC.

Current processing of I&RS Data through I&RS consists of large batch files transmitted and received by I&RS Members and their service providers through I&RS. I&RS acts as a pass through receiving the batch files from I&RS Members and sending them to

their counterparts. While effective and efficient, the sheer volume of records processed daily can make it challenging for I&RS Members to pinpoint specific information needed. For example, using Positions & Valuations (“POV”), Carriers send individual and group annuity, life insurance long-term care and retirement income/immediate annuities contract details on a daily, weekly, monthly or other periodic basis to Distributors, giving the Distributors a current snapshot of their entire book of business. Often, depending on the life cycle of a contract or the purpose for the POV data, Distributors will need only a subset of the I&RS Data provided through I&RS by the Carriers.

At the request of and in consultation with industry participants, NSCC developed IIEX, a data repository, that would provide for a centralized collection of I&RS Data, which I&RS Members and their service providers could access and query to gather meaningful information. The data in the IIEX repository would be derived from I&RS Data that is currently being sent by batch files. I&RS Members and their service providers would be able to view and retrieve all or a subset of the information. In IIEX, I&RS will continue to act as a pass through for I&RS Data but will also start storing the I&RS Data in a data repository and allow I&RS Members to transmit, view and retrieve I&RS Data using a user interface and allow I&RS Members and their service providers to transmit, view and retrieve I&RS Data using Application Programming Interfaces (“APIs”) specifically for use with IIEX.⁹ IIEX would be an addition to existing services, its use would be voluntary and existing services for Members or their service providers would not be affected by the implementation of IIEX.

I&RS Members that subscribe to IIEX could access IIEX using their same connections that they currently utilize to connect to I&RS or download an API and access IIEX through the API. Service providers that are authorized by I&RS Members to receive data will have access to IIEX using APIs. The APIs could be specifically tailored to help I&RS Members and service providers to make certain types of queries and for different uses.

Currently, each I&RS Member indicates which other I&RS Members and service providers should receive the I&RS Data relating to that I&RS Member and also the type of I&RS Data that

should be sent to other I&RS Members and service providers. This process would not change as a result of IIEX and IIEX would not change which parties receive or have access to I&RS Data. As with existing I&RS services, under IIEX only I&RS Members or their designated service providers would have access to an I&RS Member’s I&RS Data and IIEX would contain secure entitlements that would allow only I&RS Members and their service providers to view and download only that I&RS Data from IIEX that they are entitled to receive as indicated by the I&RS Member whose I&RS Data they are receiving.

Changes to the Name of I&RS and Certain Defined Terms

NSCC is also proposing to update certain defined terms and the name of the I&RS services in the Rules to reflect conventional use of such terms. NSCC is proposing to change the name of I&RS from “Insurance and Retirement Processing Services” to “Insurance & Retirement Services”. In addition, NSCC is proposing to change the term “IPS Data” to “I&RS Data”, change the term “IPS Eligible Products” to “I&RS Eligible Products”, and change the term “MF/IPS Products” to MF/I&RS Products”. NSCC is also proposing to remove the footnote in Rule 57 that states the I&RS was formerly known as the Insurance Processing Service as such information is not necessary.

(ii) Proposed Rule Changes

NSCC proposes to amend Rule 57 to add a new feature within I&RS, called Insurance Information Exchange or IIEX, that would enable I&RS Members and their service providers to transmit, view and retrieve I&RS Data using a centralized data repository.¹⁰ IIEX would be an optional feature, and I&RS Members would have access to the repository through their existing connection to NSCC or using APIs being developed in connection with the feature. Service providers would have access to IIEX using APIs only, based on authorization by I&RS Members. The subscription would allow for multiple intraday transmission, viewing, and retrieval of I&RS Data to which the I&RS Member or service provider is entitled to receive in the data repository. The proposed rule change would also provide that service providers would be

⁸ The Rules require NSCC to maintain a list of insurance products and retirement or other benefit plans or programs which may be the subject of orders processed through I&RS and may from time to time add IPS Eligible Products to such list or remove IPS Eligible Products therefrom. An IPS Eligible Product must have been assigned a CUSIP number. Section 1(d) of Rule 3, *supra* note 6.

⁹ An API is a code that allows two software programs to communicate. APIs for IIEX will allow software programs used by I&RS Member and their service providers to communicate with the IIEX repository to transmit, view and retrieve I&RS Data.

¹⁰ Rule 57 generally provides that NSCC will not be responsible for the completeness or accuracy of any data transmitted between NSCC Members through I&RS, nor for any errors, omissions or delays which may occur in the absence of gross negligence on NSCC’s part, in the transmission of such data between NSCC Members. See Rule 57, Section 1(j), *supra* note 6. The proposed changes to Rule 57 would be subject to these limitations.

required to enter into such agreements as determined by NSCC to gain access to IIEX, which agreements will include an agreement to pay the fees set forth in the Rules for IIEX.

NSCC also proposes to amend Addendum A of the Rules to include the fees for subscription to IIEX.

IIEX Fees for I&RS Members

IIEX was developed at the request of and in consultation with industry participants and the proposed fees for IIEX were created to pay for the costs of developing IIEX and maintaining IIEX in a manner that would fulfill the requirements for IIEX expected from industry participants consistent with NSCC's cost-based plus markup fee model.¹¹ Based on financial projections of development and maintenance costs and anticipated participation by I&RS Members and service providers, it is not anticipated that the IIEX costs and revenues will change the overall operating margin percentage of I&RS.

The proposed fee for I&RS Members would be a monthly subscription based on the number of policies an I&RS Member would be able to access in the data repository consistent with the current fee structure for I&RS Data. For instance, transaction fees for Positions are currently based on the number of policies accessed by each side (*i.e.*, the side delivering and the side receiving).¹² Also consistent with the current fee structure, the fees for IIEX will be tiered based on the number of policies to which a participant has access through IIEX.¹³ Those I&RS Members or service providers that have access to more policies will pay a higher monthly fee but will pay a reduced fee per policy. For instance, an I&RS Member that has access to 50,000 policies through IIEX will pay a monthly fee of \$1,500 which would be 3 cents per policy (\$1,500/50,000). An I&RS Member that has access to 200,000 policies through IIEX would pay a higher fee of \$2,000 per month which would be 1 cent per policy (\$2,000/200,000). As the number

of policies a participant has access to increases, the monthly fee increases by tier but the price per policy decreases as more policies are accessed through each tier level. This is consistent with the anticipated costs of developing and maintaining IIEX. The incremental costs to NSCC of adding a policy to the IIEX repository is not exactly linear. For instance, while it will cost more to house 100,000 policies than it does to house 50,000 policies in the IIEX repository, it will not cost twice as much. In addition, as discussed above the fees were intended to cover the costs of developing and maintaining IIEX in accordance with NSCC's cost-based plus markup fee model.¹⁴ The fee structure for existing services will not be affected by the new fees for IIEX.

This fee structure is designed to cover the costs of developing and maintaining IIEX.

Fees for I&RS Members that subscribe to IIEX would be as follows:

Number of policies	Monthly fee
0–50,000	\$1,500
50,001–200,000	2,000
200,001–400,000	3,000
Greater than 400,000	5,000

IIEX Fees for Service Providers

The proposed fee for service providers, that would only have access to IIEX through APIs, would be half the fees charged to I&RS Members and would also be based on the number of policies the service providers would be able to access in the data repository. Service providers are being charged half of the fees of I&RS Members for IIEX because they will only have access to APIs and the costs for developing and maintaining APIs is less than the costs for developing and maintaining IIEX for direct access for I&RS Members. Fees for service providers that subscribe to IIEX would be as follows:

Number of policies	Monthly fee
0–50,000	\$750
50,001–200,000	1,000
200,001–400,000	1,500
Greater than 400,000	2,500

For instance, if a Carrier subscribes and has access to 49,000 policies, the monthly fee for that Carrier would \$1,500 because it is an I&RS Member. If a Distributor subscribes and is provided access only to such Carrier's 49,000 policies, the monthly fee for the Distributor would also be \$1,500 because it is an I&RS Member. If a service provider subscribes and is

provided access only to such Carrier's 49,000 policies, the monthly fee for the service provider would be \$750.

Proposed Name Changes and Clarification Changes

NSCC would also amend NSCC's Rules to reflect the proposed name change of I&RS to Insurance & Retirement Services and change the term "IPS Data" to "I&RS Data", change the term "IPS Eligible Products" to "I&RS Eligible Products", and change the term "MF/IPS Products" to MF/I&RS Products". NSCC would also remove the footnote in Rule 57 that states the I&RS was formerly known as the Insurance Processing Service as such information is not necessary. Such changes would be made in several places in the Rules.

(iii) Implementation Timeframe

NSCC would implement the proposed changes by no later than November 30, 2020. In connection with the development of IIEX, NSCC worked with a group of I&RS Members (the "Pilot Group") to determine the requirements for IIEX that would be expected from industry participants. IIEX would initially be offered only to I&RS Members that are members of the Pilot Group in November 2020 in order to finalize testing in a production environment. For their assistance in the development of IIEX and assistance in the initial testing in production data, NSCC would not charge members of the Pilot Group for IIEX until the first full month that IIEX is available to the Pilot Group in a production environment, which is anticipated to be December 2020. IIEX would be offered to all I&RS Members and their service providers beginning January 1, 2021.

As proposed, legends would be added to the Rules stating there are changes that became effective upon filing with the Securities and Exchange Commission but have not yet been implemented. Each proposed legend also would include a date by which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Rules & Procedures.

In addition, a footnote would be added to the description of IIEX in Rule 57 that states that IIEX will initially be offered only to I&RS Members that are members of the Pilot Group, that NSCC will offer IIEX to members of the Pilot Group in November 2020 in order to finalize testing in a production environment, that NSCC will not charge the members of the Pilot Group until the

¹¹ NSCC has in place procedures to control costs and to regularly review pricing levels against costs of operation. NSCC's fees are cost-based plus a markup as approved by its Board of Directors. This markup is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements. See NSCC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf, at 121.

¹² See Section K.2. of Addendum A of the Rules, *supra* note 6.

¹³ See *e.g.*, Positions fees which are tiered based on the number of items (*i.e.*, policies) are sent or delivered. *Id.*

¹⁴ See *supra* note 11.

first full month that IIEX is available to the Pilot Group in a production environment which is anticipated to be December 2020 and that on January 1, 2021, IIEX will be offered to all I&RS Members and their service providers pursuant to Rule 57 and the footnote will automatically be removed from Rule 57.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁵ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. The changes to the name of I&RS to “Insurance & Retirement Services”, the change of the defined terms discussed above and the removal of the footnote relating to the former name of I&RS are consistent with this provision because the proposed clarification changes would enhance clarity and transparency for participants with respect to services offered by NSCC allowing I&RS Members to have a better understanding of the Rules relating to I&RS. The name changes would reflect current uses of the terms used within I&RS and removing unnecessary language will help to clarify the Rules. Having clear and accurate Rules would help I&RS Members to better understand their rights and obligations regarding NSCC’s services. NSCC believes that when I&RS Members better understand their rights and obligations regarding NSCC’s services, they can act in accordance with the Rules. NSCC believes that better enabling I&RS Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act.¹⁶

Section 17A(b)(3)(D) of the Act¹⁷ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed rule change to Addendum A is consistent with this provision of the Act because the proposed fees would align with the cost of building and delivering the proposed IIEX repository to I&RS Members and their service providers consistent with NSCC’s cost-based plus markup fee model.¹⁸ NSCC believes the proposed changes to the fee are equitable because they would apply uniformly to all Members and service providers that utilize the services. NSCC

believes the proposed changes are reasonable because they would be commensurate with the costs of resources allocated by NSCC in developing and maintaining IIEX. Based on financial projections of development and maintenance costs and anticipated participation by I&RS Members and service providers, it is not anticipated that the IIEX costs and revenues will change the overall operating margin percentage of I&RS. Therefore, by establishing fees that align with the cost of delivery of this feature and allocating those fees equitably among the subscribing users, the proposed rule change would provide for the equitable allocation of reasonable dues, fees and other charges among its participants consistent with the requirements of Section 17A(b)(3)(D) of the Act.¹⁹

In addition, the proposed rule change is designed to comply with Rule 17Ad-22(e)(21) promulgated under the Act.²⁰ Rule 17Ad-22(e)(21) under the Act requires NSCC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves. The proposed rule change would enhance the ability of I&RS Members and their service providers to transmit, view and retrieve I&RS Data in a secure, centralized location. IIEX would provide I&RS Members and their service providers a more efficient method of transmitting, viewing and retrieving I&RS Data and enable I&RS Members and their service providers to provide data necessary for transacting business more quickly and in a more streamlined manner. Therefore, by establishing a more efficient and effective process for data providers to deliver, and data receivers to receive, I&RS Data, NSCC believes that the proposed change is consistent with the requirements of Rule 17Ad-22(e)(21), promulgated under the Act.²¹

(B) Clearing Agency’s Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition because the proposed rule change would add an optional function to NSCC’s services that would provide a more efficient method by which subscribing Carriers and Distributors and their service providers may transmit, view and retrieve I&RS Data. IIEX would not affect the type of

I&RS Data that I&RS Members or their service providers are able to transmit, view and retrieve pursuant to I&RS, it would only affect the manner in which I&RS Members and service providers may transmit, view and retrieve I&RS Data. IIEX would not affect services for I&RS Members or service providers that do not subscribe to IIEX and they would transmit, view and retrieve I&RS Data in the same manner as they currently transmit, view and retrieve I&RS Data. The fees for IIEX were designed to be reasonable and align with the projected cost of building and operating the IIEX repository and APIs. Therefore, as an optional feature available for subscription, the proposed rule change would not disproportionately impact any NSCC Members, have any effect on existing NSCC services other than to add a new method of transmitting, viewing and retrieving I&RS Data, nor have any adverse impact on competition.

Moreover, because the proposed rule change would improve the efficiency by which subscribing I&RS Members and their service providers may view, transmit and retrieve I&RS Data, the proposed rule change may have a positive effect on competition among Carriers and Distributors. The proposed feature would provide these firms with a faster, more streamlined method of transmitting and receiving I&RS Data, and therefore could enable IPS Eligible Products to be marketed more quickly. Specifically, Distributors could have the ability to distribute IPS Eligible Products into the market to consumers more quickly because Distributors would have the ability to obtain information with respect to these products in a quicker, more efficient manner. NSCC does not believe that offering early access to IIEX to members of the Pilot Group for testing in the production environment will have any impact on competition. While such members will be able to access data in IIEX earlier than other I&RS Members, NSCC does not believe the early access to the data in the new repository for less than two months will have any appreciable effect on the market for such data or competition.

NSCC does not believe that the proposed changes to the name of I&RS or to the defined terms as described above, or the removal of the footnote explaining the former name of I&RS, would have any impact on competition because such changes are clarifications of the Rules which would improve the Member’s understanding of the Rules and would not otherwise affect the rights or obligations of I&RS Members.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78q-1(b)(3)(D).

¹⁸ See *supra* note 11.

¹⁹ 15 U.S.C. 78q-1(b)(3)(D).

²⁰ 17 CFR 240.17Ad-22(e)(21).

²¹ *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and paragraph (f) of Rule 19b-4 thereunder.²³ 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.

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-NSCC-2020-017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2020-017. 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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2020-017 and should be submitted on or before October 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-22379 Filed 10-8-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90088; File No. SR-NYSEARCA-2020-85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 10.9261 and 10.9830 With Recent Changes by the Financial Industry Regulatory Authority, Inc.

October 5, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on September 23, 2020, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing novel coronavirus ("COVID-19") pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that temporarily grants to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.⁴

⁴ The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020. The amended NYSE Arca rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (“NYSE American”), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.⁵ The NYSE Arca disciplinary rules were implemented on May 27, 2019.⁶

In adopting disciplinary rules modeled on FINRA’s rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.⁷

In view of the ongoing spread of COVID-19 and its effect on FINRA’s adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA’s Office of Hearing Officers (“OHO”) and the National Adjudicatory Council (“NAC”) the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261 and 9830.⁸

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things,

FINRA’s use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.⁹ According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA’s critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.¹⁰

Pursuant to a regulatory services agreement (“RSA”), FINRA’s OHO will administer all aspects of adjudications, including assigning hearing officers to serve as NYSE Arca hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its OHO administers disciplinary hearings on the Exchange’s behalf, and given that the public health concerns addressed by FINRA’s amendments apply equally to the Exchange’s disciplinary hearings, the Exchange proposes to temporarily amend its disciplinary rules to allow FINRA to conduct virtual hearings on its behalf.

Proposed Rule Change

Rule 10.9261(b) states that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party’s representative. Absent an agreement by all parties to proceed in another manner, Exchange disciplinary hearings are in-person. As noted, the Chief and Deputy Hearing Officers for all Exchange and cross-market matters are supplied by OHO and are FINRA employees. Accordingly, absent an agreement by all parties to proceed in another manner, under Rule 10.9261(b) the Chief or Deputy Hearing Officer conducts disciplinary hearings in-person.

Similarly, Rule 10.9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. Rule 10.9830(a), however, does not

specify that a party shall be entitled to be heard in-person, by counsel, or by the party’s representative.

Consistent with FINRA’s temporary amendment to FINRA Rules 9261 and 9830, the Exchange proposes to temporarily grant the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of the current COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference. The proposed rule change will permit OHO to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain fair process for the parties.¹¹ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.¹²

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 10.9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹³

Similarly, the Exchange proposes to add the following text to Rule 10.9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

Once again, the proposed language is identical to the language adopted by FINRA.¹⁴

⁵ See Securities Exchange Act Release Nos. 85639 (April 12, 2019), 85 FR 16346 (April 18, 2019) (SR-NYSEARCA-2019-15) (“2019 Notice”).

⁶ See NYSE Arca Equities RB-19-060 & NYSE Arca Options RB-19-02 (April 26, 2019).

⁷ See 2019 Notice, 84 FR at 16365 & 16373-4.

⁸ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) (“FINRA Filing”). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA’s Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. See *id.* at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department’s recommendation to deny a firm or sponsoring firm’s application to the NAC. See *id.* Under the Exchange’s version of Rule 10.9524, if the Chief Regulatory Officer rejects the application, the ETP Holder, OTP Holder or OTP Firm, or applicant may request a review by the Exchange Board of Directors. This differs from FINRA’s process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁹ See FINRA Filing, 85 FR at 55713.

¹⁰ See *id.*

¹¹ See FINRA Filing, 85 FR at 55713.

¹² The Exchange notes, as did FINRA, that SEC’s Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission’s discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

¹³ See FINRA Filing, 85 FR at 55712.

¹⁴ *Id.*

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁷

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as FINRA's rule. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed temporary rule change will permit the Exchange to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and

oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings for disciplinary matters to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.¹⁸

For the same reasons, the Exchange believes that the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁹ The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA

Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.²⁰ The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²⁰ FINRA Filing, 85 FR at 55716.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 15 U.S.C. 78s(b)(2)(B).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) and 78f(d).

¹⁸ See text accompanying notes 9–10, *supra*.

¹⁹ 15 U.S.C. 78f(b)(7) and 78f(d).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2020-85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2020-85. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2020-85 and should be submitted on or before October 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-22376 Filed 10-8-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90093; File No. SR-CBOE-2020-088]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Update Its Fees Schedule in Connection With the Exchange's Plans To List and Trade Options on the S&P 500 ESG Index ("SPESG")

October 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 23, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to update its Fees Schedule in connection with the Exchange's plans to list and trade options on the S&P 500 ESG Index ("SPESG"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to list and trade SPESG, effective September 21, 2020.³

By way of background, the S&P 500 ESG Index is a broad-based, market-capitalization-weighted index that is designed to measure the performance of securities meeting sustainability criteria, while maintaining similar overall industry group weights as the S&P 500. Each constituent of a S&P 500 ESG Index is a constituent of the S&P 500 Index. S&P Dow Jones Indices' ("S&P DJI") assigns constituents to a S&P 500 ESG Index based on S&P DJI ESG Scores and other environmental, social and governance ("ESG") data to select companies, targeting 75% of the market capitalization of each global industry classification standard ("GICS") industry group within the S&P 500. Because of the relation between the S&P 500 ESG Index and the S&P 500, which will likely result in market participants' investment and hedging strategies consisting of options over both, the Exchange will allow the same monthly expirations, settlement and exercise style, Market-Maker appointment weights, as the other options on the S&P 500 ("SPX").⁴ The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of SPESG. The proposed changes amend the Fees Schedule so that the majority of the existing transactions fees and programs currently applicable to trading in SPX will also apply to trading in SPESG.

The proposed rule change adds SPESG to the list of products in Underlying Symbol List A in footnote 34 of the Fees Schedule, which currently includes SPX (and SPX Weeklys ("SPXW")). Underlying Symbol List A represents a specific set of proprietary products⁵ that are collectively included or excluded from a variety of programs, qualification calculations and transaction fees as a

³ The Exchange initially filed the proposed fee changes on September 18, 2020 (SR-CBOE-2020-087). On September 23, 2020, the Exchange withdrew that filing and submitted this filing.

⁴ See Securities Exchange Release No. 89749 (September 2, 2020), 85 FR 55723 (September 9, 2020) (SR-CBOE-2020-080), which amends certain Exchange Rules in connection with the Exchange's plans to list and trade S&P 500 ESG Index options.

⁵ See Cboe Options Fees Schedule, Footnote 34. Underlying Symbol List A currently includes: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW) and VIX.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁴ 17 CFR 200.30-3(a)(12).

result of the considerable resources the Exchange expends developing and maintaining its proprietary, exclusively listed products. Like SPX and the other products currently represented by “Underlying Symbol List A,” SPESG options are not listed on any other exchange. As such, the Exchange proposes to add SPESG to the products that make up Underlying Symbol List A. Therefore, by their inclusion in Underlying Symbol List A, transactions in SPESG are excluded from the Liquidity Provider Sliding Scale⁶ (as proposed and discussed below, SPESG transactions are included in the SPX Liquidity Provider Sliding Scale), Volume Incentive Program (“VIP”),⁷ Break-Up Credits applicable to Customer Agency Orders in AIM and SAM,⁸ the Marketing Fee,⁹ the Clearing Trading Permit Holder Fee Cap (“Fee Cap”),¹⁰ the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fees for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction,¹¹ the AIM Responder Fee,¹² exemption from fees for facilitation orders,¹³ the AIM Contra Execution Fee,¹⁴ the Order Router Subsidy (“ORS”) and Complex Order Router Subsidy (“CORS”) Programs,¹⁵ and the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM.¹⁶ Also, by including SPESG in Underlying Symbol List A, the FLEX Surcharge Fee¹⁷ of \$0.10 (capped at \$250 per trade) applies to all FLEX transactions in SPESG, and transactions in SPESG are eligible for reduced rates under the Clearing

Trading Permit Holder Proprietary Products Sliding Scale.¹⁸

The proposed rule change also adopts the following transaction fees and adds SPESG to the description of the existing fees for various orders in SPX, including:

- Non-Customer, Non-Market-Maker, Non-Firm orders in SPX (yielding fee code “BT”) and are assessed a standard fee of \$0.42;
- Customer, Premium orders for less than \$1.00 in SPX (yielding fee code “CS”) and are assessed a standard fee of \$0.36;
- Customer Premium orders for greater than or equal to \$1.00 in SPX (yielding fee code “CT”) and are assessed a standard fee of \$0.45;
- Market-Maker orders in SPX (yielding fee code “MS”) and are assessed a standard fee of \$0.28; and
- Firm orders in Underlying Symbol List A, under which SPX is currently listed and to which the Exchange proposes to add SPESG as discussed above, (yielding fee code “FH”) and are assessed a standard fee of \$0.26.

The proposed rule change also adds SPESG to the existing surcharges assessed on transactions in SPX, including:

- The Execution Surcharge of \$0.21;
- the AIM Response Surcharge Fee of \$0.05;
- the AIM Contra Surcharge Fee of \$0.10; and
- the AIM Agency/Primary Surcharge Fee of \$0.10.

The Exchange does not at this time propose to assess the Index License fee on transactions in SPESG in order to promote and encourage trading of SPESG once listed. The Exchange notes that Index License fees are likewise currently waived for options in other classes in order to continue to promote their trading and growth.¹⁹ Where the proposed rule change adds SPESG to the existing transactions fees and surcharges in place for SPX, as listed above, the proposed change also updates footnotes 12 and 21, appended to such transactions and surcharges, to reflect the inclusion of SPESG. Specifically, footnote 12 provides for pricing changes if the Exchange is operating in an all-electronic environment and, within the footnote, the proposed rule updates: Item (3), to provide that SPX and

SPESG, and SPXW Execution Surcharges will be waived, where applicable, for SPX/SPXW and SPESG orders executed via AIM and for SPX/SPXW Related Future Cross (“RFC”) orders; item (4), to provide that the AIM Agency/Primary Surcharge for SPX/SPXW, SPESG and VIX and RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW, SPESG and VIX AIM Agency/Primary orders and all SPX/SPXW and VIX RFC initiating orders, respectively, when the Exchange operates in a screen-based only environment and such fee will be invoiced to the executing Trading Permit Holder; and item (9), to provide that the AIM Contra Surcharge and AIM Response Surcharge will apply to all SPX/SPXW and SPESG AIM Contra and AIM Response/Priority Response orders, respectively, when the Exchange operates in a screen-based only environment.²⁰ Additionally, in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX/SPXW and SPESG during Regular Trading Hours. The Exchange notes that RFC orders are limited to SPX/SPXW and VIX, therefore, the proposed rule change to item (4) in footnote 12 makes it clear that RFC Execution Surcharges will continue to apply to SPX/SPXW and VIX while the Execution Surcharges will apply to SPX/SPXW, SPESG and VIX. The proposed rule change updates footnote 21 to include SPESG, where applicable, and provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to: (i) Orders in SPX or SPXW options in the SPX electronic book for those SPX or SPXW options that are executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation and (ii) orders executed in SPX, SPXW and SPESG by a floor broker using a PAR terminal. The Exchange notes that SPESG will not be included in the VIX settlement (therefore item (i) within footnote 21 does not apply) and that SPESG

²⁰ The Exchange notes that it the proposed rule change does not add SPESG to item (5), in connection with the SPX/SPXW, VIX and RUT Tier Appointment Fee, because, the Exchange wishes to encourage trading and participation in the new SPESG market and believes that not assessing the appointment fees at this time for those participants that elect to support the new product is a reasonable means by which to do so. The Exchange notes that, at a future date, and as the SPESG market develops, it may look to assess such fees for SPESG.

⁶ See Cboe Options Fees Schedule, Liquidity Provider Sliding Scale table and footnote 10.

⁷ See Cboe Options Fees Schedule, Volume Incentive Program (VIP) table and Footnote 36.

⁸ See Cboe Options Fees Schedule.

⁹ See Cboe Options Fees Schedule, Marketing Fees table.

¹⁰ See Cboe Options Fees Schedule, Clearing Trading Permit Holder Fee Cap table and footnotes 11 and 22.

¹¹ See Cboe Options Fees Schedule, Footnote 22.

¹² See Cboe Options Fees Schedule, Footnote 20.

¹³ See Cboe Options Fees Schedule, Footnote 11.

¹⁴ See Cboe Options Fees Schedule, Footnote 18.

¹⁵ See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

¹⁶ See Cboe Options Fees Schedule, Footnote 35.

¹⁷ See Cboe Options Fees Schedule, Footnote 17. The Exchange also notes that the proposed rule change updates an existing error within the FLEX Surcharge Fee line by correcting the spelling of “except”.

¹⁸ See Cboe Options Fees Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale table and footnote 11.

¹⁹ See e.g. Securities Exchange Act Release No. 87953 (January 13, 2020), 85 FR 3091 (January 17, 2020) (SR-CBOE-2020-001), which waived permanently the Index License fees for transactions in Sector Index options to continue to encourage their growth and trading.

executed from PAR will be treated the same as SPX/SPXW.

Likewise, the proposed rule change also includes SPESG, along with SPX (and SPXW),²¹ in the Floor Brokerage Fees table, which assesses volume executed in open outcry. The proposed rule change also updates footnote 24, which accompanies the Floor Brokerage Fees table, to reflect the addition of SPESG. Footnote 24 provides for fee changes when the Exchange is operating in a modified state due to COVID-19 and the proposed rule change updates item (2) within the footnote to provide that SPX/SPXW and SPESG Floor

Brokerage Fees will be assessed the rate of \$0.05 per contract for non-crossed orders and \$0.03 per contract for crossed orders. The Exchange notes that the proposed changes to footnotes 12, 21 and 24 do not alter the application of any of the existing fees but merely adds SPESG, where applicable, to reflect its inclusion in the relevant fee tables.

The proposed rule change also adds SPESG to the SPX Liquidity Provider Sliding Scale²² and the Floor Brokerage Fees Discount Scale. The SPX Liquidity Provider Sliding Scale provides incremental incentives for Market-Makers to reach the highest tier level

and provides progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month and, likewise, the Floor Brokerage Fees Discount Scale provides discounted floor brokerage fees if floor brokers meet certain volume thresholds in SPX (as well as other proprietary products) during a given month. The proposed rule change extends the same opportunities currently provided to Trading Permit Holders for transactions in SPX to transactions in SPESG options in order to encourage trading in such options.

Premium level	Expiring, 7 days or less		Near term, 8 days to 60 days		Mid term, 61 days to 270 days		Long term, 271 days or greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00–\$5.00	\$0.50	10	\$0.40	25	\$0.60	15	\$1.00	10
\$5.01–\$15.00	2.00	7	1.60	18	2.40	11	4.00	7
15.01–50.00	5.00	5	4.00	13	6.00	8	10.00	5
50.01–100.00	10.00	3	8.00	8	12.00	5	20.00	3
100.01–200.00	20.00	2	16.00	5	24.00	3	40.00	2
Greater than 200.00	30.00	1	24.00	3	36.00	1	60.00	1

The above heightened quoting standards in the table above are substantively identical to the heightened quoting standards for the GTH SPX/SPXW LMM Incentive Program. The Exchange notes that, unlike the SPX/SPXW LMM Incentive Program, an LMM in SPESG may meet the heightened quoting standard in RTH in 60% of the series. Like with the GTH SPX/SPXW Incentive Program, LMMs in SPESG are not obligated to satisfy the heightened quoting standards described in the table above, but instead are eligible to receive the rebate if they satisfy the heightened requirements. The heightened requirements are designed to incentivize LMMs to provide significant liquidity in SPESG during the trading day upon their listing and trading on the Exchange. The Exchange may also consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²³ Specifically,

the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable and equitable to add SPESG to Underlying Symbol List A, thus including SPESG transactions in, or excluding transactions from, certain programs, qualification calculations and transactions fees currently applicable to SPX (along with other proprietary products in Underlying Symbol List A), and to assess the same transaction and surcharge fees, as well as incentive scale tables (i.e. Clearing Trading Permit Holder Proprietary Products, SPX Liquidity Provider and Floor Brokerage Discount sliding scales), for SPESG that currently apply to SPX options, because of the relation between the S&P 500 ESG Index and the S&P 500 Index, wherein each constituent of a S&P 500 ESG Index is a constituent of the S&P 500

Index. The Exchange notes that the proposed rule change does not alter any of the existing program rates or transaction fees, but instead, proposes to assess those rates and fees for transactions in SPESG options in the same way the Exchange currently assesses them for transactions in SPX options. The Exchange also believes that it is reasonable and equitable not to assess the Index License fee on transactions in SPESG because SPESG is a new product and the Exchange wishes to promote and encourage trading of SPESG once listed. The Exchange notes the Index License fees are likewise currently waived for options in other classes in order to continue to promote their trading and growth.²⁶

In addition to this, the Exchange believes that it is reasonable to extend the existing opportunities under the SPX Liquidity Provider Sliding Scale and the Floor Brokerage Fees Discount Scale to Market-Makers and/or floor brokers, respectively, for SPESG so they may have opportunities to receive a discount by achieving various levels of volume in SPESG. The Exchange believes the programs are reasonably designed to encourage such participants to increase their submission of liquidity in SPESG, both electronically and in open outcry. This increase in the

²¹ The proposed rule change also updates “SPX Index Options” to instead read “SPX/SPXW” to provide additional clarity within the Floor Brokerage Fees table.

²² The proposed rule change also updates the title of the table to “SPX/SPXW and SPESG Liquidity Provider Sliding Scale” to provide additional clarity regarding the products eligible under the table.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ *Id.*

²⁶ See *supra* note 17.

Exchange's hybrid liquidity pool may bring greater trading activity, execution opportunities, pricing transparency and discovery to the SPESG market, both electronically and on the trading floor, to the benefit of all market participants. Similarly, the Exchange believes it is reasonable to extend the existing opportunity under the Clearing Trading Permit Holder Proprietary Products Sliding Scale (by nature of the proposed addition of SPESG to Underlying Symbol List A) for Clearing Trading Permit Holders to receive reduced fees in their transactions in SPESG, because it applies to all other Underlying Symbol List A products, including SPX and because it is reasonably designed to incentivize Clearing Trading Permit Holders to increase their overall volume, which may increase liquidity, in turn may provide greater trading activity, execution opportunities, pricing transparency and discovery for those options markets, thereby benefitting all market participants.

The Exchange believes that the proposed RTH SPESG LMM Incentive Program is reasonable and equitable because the amended heightened quoting standards and rebate amount for meeting the heightened quoting standards in SPESG series are reasonably designed to incentivize an appointed LMM to meet the RTH quoting standards for SPESG, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in a newly listed and traded product on the Exchange during the trading day. The Exchange believes that the proposed heightened quoting standards in SPESG are reasonable in that they are substantially identical to the heightened quoting standards currently in place for GTH SPX/SPXW LMMs. While the proposed percentage of the series (60% of SPESG series) that an LMM must meet the proposed heightened quoting requirements is less than the percentage of the series that an LMM must meet the heightened quoting requirements in SPX and/or SPXW (85% of each series) is reasonable given the new market ecosystem for SPESG as compared to that of SPX/SPXW. The established SPX/SPXW market contains deep pools of liquidity and is highly active, which, in turn, assists LMMs in SPX/SPXW to more easily offset risk and hedge, as needed. Because the SPESG market is still new and not yet as robust as that of SPX/SPXW, it may pose more difficulty for LMMs in SPESG to offset risk and hedge, thus

more difficulty in achieving the heightened quoting requirement. Therefore, the Exchange believes the proposed percentage of the series is reasonably commensurate with the potentially higher risk, and challenge in achieving the heightened quoting requirements, LMMs would have to take on in the new SPESG market. Moreover, the Exchange believes that the proposed monthly rebate pool of \$50,000 split between LMMs that meet the heightened quoting standards in SPESG in a month, as proposed, is reasonable and equitable as it falls within a comparable realm of rebates offered for other, similar LMM incentive programs for similar products,²⁷ and such similar LMM incentive programs have prior had similar compensation pools in place.²⁸ If, for example, two LMMs were to meet the proposed heightened quoting requirements, they would each receive \$25,000, which is comparable to the \$20,000 available to SPX/SPXW LMMs that meet the heightened quoting requirements in both series pursuant to the GTH SPX/SPXW LMM Incentive Program. In addition to this, the Exchange believes that it is reasonable to offer \$50,000 as the entirety of the compensation pool, as it is designed to encourage substantial liquidity during RTH in a newly listed and traded product by providing a large enough pool for which multiple LMMs may compete, and receive meaningful incentive in a pro-rata share. While the Exchange has no way of predicting with certainty how the proposed rule change would impact LMM trading activity, it anticipates that at least two LMMs will be able to reasonably compete for and reach the heightened quoting requirements. The Exchange further notes that, if one LMM were to achieve the heightened quoting requirements in a month, it believes that \$50,000 is a reasonable incentive given the risks and level of difficulty posed by the newly developing SPESG market as described above.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees for certain market participants transacting in SPESG because the current Clearing Trading Permit Holder Proprietary Products, SPX and SPESG (as proposed) Sliding, and Floor Brokerage Fees

²⁷ See Cboe Options Fees Schedule, GTH SPX/SPXW LMM Incentive Program, which provides a monthly rebate in the amount of \$10,000 per each series (for an opportunity to receive \$20,000 in total) for reaching the heightened quoting requirements.

²⁸ See Securities Exchange Release No. 87265 (October 9, 2019), 84 FR 87265 (October 16, 2019) (SR-CBOE-2019-083).

Discount scales already provide the same for such transactions in SPX. Moreover, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees for Clearing Trading Permit Holders transacting in SPESG because it will apply to all Clearing Trading Permit Holders uniformly, as it currently does for transactions in all proprietary products within Underlying Symbol List A. The Exchange also believes offering discounts to Clearing Trading Permit Holders is equitable and not unfairly discriminatory because Clearing Trading Permit Holders must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake. Similarly, assessing lower fees for Market-Makers in SPESG pursuant to the SPX/SPXW and SPESG (as proposed) Liquidity Provider Sliding Scale, as compared to other market participants, is equitable and not unfairly discriminatory because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. The Exchange notes that it provides Market-Maker-specific incentives in a number of places within the Fees Schedule.²⁹ Further, these lower fees offered to Market-Makers are intended to incentivize Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers applies equally to all Market-Makers, meaning that all Market-Makers in SPESG are subject to the SPX/SPXW and SPESG Liquidity Provider Sliding Scale. Likewise, the Exchange believes providing discounts for Floor Brokers' transactions in SPESG is equitable and not unfairly discriminatory because it applies equally to all Floor Brokers, which function to bring necessary liquidity to the Exchange's trading floor thus maintaining a robust hybrid market on the Exchange to the benefit of all market participants.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to SPESG LMMs pursuant to the proposed RTH SPESG LMM Incentive Program, because it will

²⁹ See e.g., Cboe Options Fees Schedule, Liquidity Provider Sliding Scale table, GTH VIX/VIXW LMM Incentive Program, and GTH SPX/SPXW Incentive Program.

benefit all market participants trading SPESG during RTH by encouraging the LMMs to satisfy the heightened quoting standard, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that its LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade SPESG, which can lead to increased volume, providing for robust markets. The Exchange ultimately wishes to sufficiently incentivize LMMs to provide liquid and active markets in the newly listed and traded SPESG during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (e.g., having to purchase additional logical connectivity). The Exchange believes the proposed program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs in VIX/VIXW and SPX/SPXW, and the proposed program will equally apply to any TPH that is appointed as a SPESG LMM. Additionally, if an LMM does not satisfy the heightened quoting standard in SPESG for any given month, then it simply will not receive the offered payment for that month.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it uniformly includes transactions in SPESG in, or excludes transactions in SPESG from, certain programs, qualification calculations and transactions fees, as well as uniformly assesses transaction and surcharge fees, for all qualifying Trading Permit Holders' transactions in SPESG, as it currently does for related SPX options. Moreover, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For

example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants do not have. Further, the Exchange current fees and rebates are intended to encourage market participants to bring increased volume to the Exchange, to the benefit of all market participants. The Exchange also does not believe that the proposed LMM incentive program for SPESG would impose any burden on intramarket competition because it applies to all LMMs appointed to SPESG in a uniform manner, in the same way similar programs apply to LMMs in VIX/VIXW and SPX/SPXW today. To the extent these LMMs receive a benefit that other market participants do not, as stated, LMMs have different obligations and are held to different standards. For example, LMMs play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing SPESG market, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees assessed and discount apply to an Exchange proprietary product, SPESG, which will be listed and traded exclusively on the Exchange on September 21, 2020.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁰ and paragraph (f) of Rule 19b-4³¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission will 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-CBOE-2020-088 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-CBOE-2020-088. 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-CBOE-2020-088 and should be submitted on or before October 30, 2020.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-22378 Filed 10-8-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90091; File No. SR-NYSE-2020-77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Rule 8.601 (Active Proxy Portfolio Shares) and Rule 8.900 (Managed Portfolio Shares), Amend the Preamble to Rule 8P, and Amend Section 302.00 of the Listed Company Manual

October 5, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 22, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) adopt new Rule 8.601, (2) adopt new Rule 8.900, (3) amend the preamble to Rule 8P, and (4) amend Listed Company Manual Section 302.00. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rules 8.601 and 8.900 to list Active Proxy Portfolio Shares and Managed Portfolio Shares, respectively, on the Exchange. These proposed rules are based on the NYSE Arca, Inc. (“NYSE Arca”) rules of the same number, with non-substantive changes. The Exchange also proposes to amend the preamble to Rule 8P to permit the listing of Active Proxy Portfolio Shares and Managed Portfolio Shares on the Exchange. The Exchange also proposes to amend Section 302.00 of the Listed Company Manual to include Active Proxy Portfolio Shares and Managed Portfolio Shares listed pursuant to proposed Rules 8.601 and 8.900 among the securities for which the annual shareholders’ meeting requirement does not apply.

Proposed Rule 8.601

The Exchange proposes to add new Rule 8.601 to permit the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. Proposed Rule 8.601 is based on NYSE Arca Rule 8.601-E without any substantive differences.

Proposed Listing Rules

Proposed Rule 8.601(a) provides that the Exchange would consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601.

Proposed Rule 8.601(b) provides that Rule 8.601 would be applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601, or unless the context otherwise requires, the rules and procedures of the Exchange’s Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601(b) provides further that Active Proxy Portfolio Shares would be included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601(c)(1) defines the “Active Proxy Portfolio Share” as a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601(c)(2) defines the term “Actual Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.

Proposed Rule 8.601(c)(3) defines the term “Proxy Portfolio” as a specified portfolio of securities, other financial instruments, and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 (the “1940 Act”) applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.⁴

⁴ The information required in proposed Rule 8.601(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c-11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c-11. See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “Rule 6c-11 Release”). The Exchange believes it is appropriate

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Proposed Rule 8.601(c)(4) defines the term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption, or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.601(c)(5) defines the term “normal market conditions” as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

Proposed Rule 8.601(d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601(d)(1) provides that each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series

shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 8.601(d)(2) provides that each series of Active Proxy Portfolio Shares shall be listed and traded subject to application of the following continued listing criteria: The Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time (proposed Rule 8.601(d)(2)(A)(i)), and the Proxy Portfolio will be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and will be made available to all market participants at the same time (proposed Rule 8.601(d)(2)(B)(i)).

Proposed Rule 8.601(d)(2)(C) provides that the Exchange would consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) If any of the continued listing requirements set forth in Rule 8.601 are not continuously maintained;

(ii) if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

(iii) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iv) if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(v) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange’s rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

(vi) if such other event shall occur or condition exists which, in the opinion

of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 8.601(d)(2)(D) (Trading Halt) provides that (i) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to UTP, the Exchange shall halt trading in that series as specified in Rule 7.18(d)(1). If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time, as applicable.

Proposed Rule 8.601(d)(2)(E) provides that, upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.601(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.601(e) (Limitation of Exchange Liability) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses, or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the

to require such information, rather than all information required under Rule 8.600(c)(2). In adopting this requirement for funds operating in compliance with Rule 6c-11, the Commission stated that “a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, Rule 6c-11 will require an ETF to post a subset of the information required by the listing exchanges’ current generic listing standards for actively managed ETFs.” The Commission stated further that “this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.” See Rule 6c-11 Release, notes 249–260 and accompanying text.

Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Commentary .01 to Rule 8.601 provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .02 provides that transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in Rule 7.34(a).

Proposed Commentary .03 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or the Proxy Portfolio or changes

thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or the Proxy Portfolio or changes thereto.

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under Rule 8.600 and for which a "Disclosed Portfolio" is required to be disseminated at least once daily,⁵ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.⁶ The composition of the portfolio

⁵ Rule 8.600(c)(2) defines the term "Disclosed Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. Rule 8.600(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁶ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete

of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the intraday value of exchange-traded funds ("ETFs"), and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in ETPs.⁷ For Active Proxy Portfolio Shares, market makers may use the

portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

⁷ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement (the "Registration Statement"), as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Creations and Redemptions of Shares

Active Proxy Portfolio Shares of a fund may be offered, issued, and sold to investors only in specified minimum size "Creation Units" through a fund's distributor (the "Distributor") on a continuous basis at the NAV per share next determined after an order in proper form is received. The NAV of a fund is expected to be determined at the end of each business day (ordinarily 4:00 p.m. E.T.). Creation Units will only be sold and redeemed on business days. Creation Units of a fund may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

The "Creation Basket" (as defined below) for a fund's Active Proxy Portfolio Shares will be based on the fund's Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating a fund's NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of shares will be based on the NAV of a fund.

A fund's shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase

Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive an in-kind transfer of specified instruments ("Redemption Instruments"). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a fund (collectively, the "Creation Basket") will be the same as a fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

While a fund normally will issue and redeem shares in kind, a fund may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. E.T.) on a given business day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), to have the purchase or redemption, as applicable, be made entirely or in part in cash. Each business day, before the open of trading on the Exchange, a fund will cause to be published through the National Securities Clearing Corporation ("NSCC") the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) A "participating party" (*i.e.*, a broker or other participant), in the Continuous Net Settlement ("CNS") System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (2) a DTC Participant, which in any case has executed a participant agreement

with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time ("NAV Calculation Time") on the date the order is placed ("Transmittal Date") in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date.

Availability of Information

The following information will be publicly available on a fund's website before the commencement of trading in a series of Active Proxy Portfolio Shares on each business day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio).

- The historical "Tracking Error" between the fund's last published NAV per share and the value, on a per share basis, of the fund's Proxy Portfolio calculated as of the close of trading on the prior business day.

- The "Proxy Overlap," which is the percentage weight overlap between the Proxy Portfolio's holdings compared to the Actual Portfolio's holdings that formed the basis for the fund's calculation of NAV at the end of the prior business day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

Typical mutual fund-style annual, semi-annual, and quarterly disclosures contained in a fund's Commission filings will be provided on the fund's website on a current basis.⁸ Thus, each issuer of a series of Active Proxy Portfolio Shares will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain a fund's SAI, Shareholder Reports, Form N-CSR, N-PORT and Form N-CEN. The prospectus, SAI, and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic

⁸ See note 6, *supra*.

services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares, equity securities, and ETFs will be available via the Consolidated Tape Association ("CTA") high-speed line or from the exchange on which such securities trade. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Active Proxy Portfolio Shares.⁹ Trading will be subject to proposed Rule 8.601(d)(2)(D), which sets forth circumstances under which trading in a series of Active Proxy Portfolio Shares will be halted.

Specifically, proposed Rule 8.601(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to UTP, the Exchange shall halt trading in that series as specified in Rule 7.18(d)(1). If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

⁹ See Rule 7.12.

Trading Rules

The Exchange deems Active Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange in all trading sessions in accordance with Rule 7.34(a). As provided in Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

For each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, pursuant to proposed Rule 8.601(d)(1)(B), the Exchange, prior to commencement of trading in a series, will obtain a representation from the issuer that the NAV per share will be calculated daily and that the NAV, Proxy Portfolio, and the Actual Portfolio for a fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Surveillance

Trading in series of Active Proxy Portfolio Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁰ The Exchange believes that these procedures are adequate to properly monitor Exchange trading of the shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns,

¹⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the shares and underlying exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹¹

As noted above, proposed Commentary .03 to Rule 8.601 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from

¹¹ For a list of the current members of ISG, see www.isgportal.org.

the issuer of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601. The Exchange notes that proposed Commentary .01 to Rule 8.601 would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601.

The Exchange will also require each issuer of a fund to advise the Exchange of any failure by the fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5(m).

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Proposed Rule 8.900

The Exchange proposes to add new Rule 8.900 to permit the listing and trading, or trading pursuant to UTP, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company. Proposed Rule 8.900 is based on NYSE Arca Rule 8.900-E without any substantive differences.

Proposed Listing Rules

Proposed Rule 8.900(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 8.900.

Proposed Rule 8.900(b) provides that Rule 8.900 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 8.900, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.900(b) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 8.900(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. The proposed rule further provides that all statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Rule 8.900(b)(2) provides that transactions in Managed Portfolio Shares will occur during the trading hours specified in Rule 7.34(a).

Proposed Rule 8.900(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Rule 8.900(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliates, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Rule 8.900(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or

changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Proposed Rule 8.900(c)(1) defines the term "Managed Portfolio Share" as a security that (a) represents an interest in an Investment Company organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.900(c)(2) defines the term "Verified Intraday Indicative Value" ("VIIV") as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

Proposed Rule 8.900(c)(3) defines the term "AP Representative" as an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized

Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Rule 8.900(c)(4) defines the term “Confidential Account” as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Rule 8.900(c)(5) defines the term “Creation Basket” as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Rule 8.900(c)(6) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

Proposed Rule 8.900(c)(7) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

Proposed Rule 8.900(c)(8) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to UTP), as the official source for calculating and reporting information relating to such series, including, but not limited to, the net

asset value, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.900(c)(9) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operations issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruptions, or any similar intervening circumstance.

Proposed Rule 8.900(d) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.900(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 8.900(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session (as defined in Rule 7.34) and will be disseminated to all market participants at the same time.

Proposed Rule 8.900(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) for, a series of Managed Portfolio Shares under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of

Managed Portfolio Shares; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 8.900(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained; (vii) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange’s rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares, are not continuously maintained; or (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 8.900(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the

portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 8.900(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

Proposed Rule 8.900(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.900(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 8.900(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the

reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 8.900(f), which relates to disclosures, provides that the provisions of subparagraph (f) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its member organizations regarding application of subparagraph (f) to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that member organizations provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such a purchaser. In addition, member organizations shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member organization to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A member organization carrying an omnibus account for a non-member organization broker-dealer is required to inform such non-member organization that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed

to constitute agreement by the non-member organization to make such written description available to its customers on the same terms as are directly applicable to member organizations under this rule.

Upon request of a customer, a member organization shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, will be similar to Managed Fund Shares (as defined in Rule 8.600), Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,¹² the portfolio for a series of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.¹³ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund’s portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close

¹² See note 5, *supra*.

¹³ See note 6, *supra*.

estimate of that value throughout the trading day.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁴ For Managed Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund Registration Statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge¹⁵ of a fund's underlying portfolio.¹⁶ This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

¹⁴ See note 7, *supra*.

¹⁵ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that shares of a fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell shares short and purchase securities that the AP believes will track the movements of a fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create fund shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem shares on its behalf.

¹⁶ APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each fund's website.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, *i.e.* the Deposit Instruments or "Redemption Instruments" and the estimated "Balancing Amount" (if any),¹⁷ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a fund, as described below.

Creation and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account¹⁸ with an AP Representative,¹⁹ which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.²⁰ An AP must be a Depository Trust

¹⁷ The Balancing Amount is the cash amount necessary for the applicable fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

¹⁸ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a fund's Creation Basket or portfolio securities, such as a fund's custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁹ Each AP shall enter into its own separate Confidential Account with an AP Representative.

²⁰ Each fund will identify one or more entities to enter into a contractual arrangement with the fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a fund will obtain representations from the entity related to the confidentiality of the fund's Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the AP Representative or any person associated with the AP Representative.

Company ("DTC") Participant that has executed a "Participant Agreement" with the applicable distributor (the "Distributor") with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. A fund will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intraday changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit funds to be as fully invested as possible, shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by a fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and APs redeeming their shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.²¹

In the case of a creation, the AP²² would enter into an irrevocable creation order with a fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the

²¹ Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

²² An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during the Core Trading Session.

Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a fund. Rather, if other market participants wish to create or redeem shares in a fund, they will have to do so through an AP.

Placement of Purchase Orders

Each fund will issue shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of shares will operate in a manner substantially similar to that of other ETFs. Each fund will issue shares only at the NAV per share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each fund is expected to be determined once each business day at a time determined by the board of the Investment Company ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily, 4:00 p.m. E.T.) (the "Valuation Time"). Each fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of shares, an AP must submit to the Distributor an irrevocable order to purchase such shares after the most recent prior Valuation Time.

Purchases of shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per share purchased plus applicable "Transaction Fees," as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Core Trading Session on the date such order is placed ("Transmittal Date") in order for the purchaser to receive the NAV per share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the

Distributor, no later than the Order Cut-Off Time.²³

Authorized Participant Redemption

The shares may be redeemed to a fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP ("AP Redemption Order"). Each fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁴

²³ A "custom order" is any purchase or redemption of shares made in whole or in part on a cash basis, as provided in the Registration Statement.

²⁴ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The

Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the shares²⁵ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a fund pro rata. To the extent a fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of shares. At the time of settlement, an AP will initiate a delivery of the shares plus or minus any

Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with a fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²⁵ If the NAV of the shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares, upon initial listing and periodically thereafter, to provide a representation that it is in compliance with Rule 8.900. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.900.

The Exchange will require each issuer of a fund to represent that it will advise the Exchange of any failure by a fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If a fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting proceedings under Rule 5.5(m).

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 8.900(b)(3), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory

functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

The Exchange notes that any equity instruments or futures held by a fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 8.900(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the shares, underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the shares, underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (1) The extent to which trading is not

²⁶ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

occurring in the securities and/or the financial instruments comprising the portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (1) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (2) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (3) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (4) such holdings are not made available to all market participants at the same time (except as otherwise permitted under a currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, "Availability of Information Halts"). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the CTA high-speed line. In addition, the VIIV, as defined in proposed Rule 8.900(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second

intervals during the Exchange's Core Trading Session.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during the trading hours specified in Rule 7.34(a). As provided in Rule 7.6, the MPV for quoting and entry of orders in equity securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its member organizations in an Information Bulletin of the special characteristics and risks associated with trading the shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of shares; (2) how information regarding the VIIV is disseminated; (3) the requirement that member organizations deliver a prospectus to investors purchasing newly issued shares prior to or concurrently with the confirmation of a transaction; (4) trading information; and (5) that the portfolio holdings of the shares are not disclosed on a daily basis.

In addition, the Bulletin will reference that funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the shares will be calculated after 4:00 p.m., E.T. each trading day.

Rule 8P Preamble

The Exchange proposes that a security listed on the Exchange under either proposed Rule 8.601 or 8.900 would trade no differently than other securities listed on the Exchange, including that such securities would be assigned to a designated market maker ("DMM") pursuant to Rule 103B.

As described above, the portfolios of both Active Proxy Portfolio Shares and Managed Portfolio Shares are not disclosed on a real-time basis and therefore market participants, including the DMM, would not know whether a specific NYSE-listed security would be included in the portfolio of such products. Because DMMs would not know whether an NYSE-listed security

would be a component of a series of Active Proxy Portfolio Shares or Managed Portfolio Shares, the Exchange proposes to revise the preamble to Rule 8P, governing the trading of certain exchange traded products ("ETPs"). The preamble currently states that the Exchange will not list pursuant to Rule 8P any ETPs that have any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. To reflect that the portfolios of ETPs that are Active Proxy Portfolio Shares and Managed Portfolio Shares would not be publicly available in real-time and to permit the listing and trading of such ETPs on the Exchange, the Exchange proposes to revise the preamble to state that it would not apply to ETPs listed pursuant to proposed Rules 8.601 and 8.900 and therefore such products could be listed and traded on the Exchange.

Listed Company Manual Section 302.00

The Exchange proposes to amend Section 302.00 of the Listed Company Manual to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601 and Managed Portfolio Shares listed pursuant to proposed Rule 8.900 among the securities to which the requirements of Section 302.00 regarding annual shareholders' meetings do not apply. The proposed change would also align Section 302.00 with NYSE Arca Rule 5.3-E.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5),²⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. In addition to the reasons enumerated below, the Exchange believes that the proposed changes would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest

because the proposed rules are based on rules of the Exchange's affiliated market, NYSE Arca, that have been approved by the Commission. Accordingly, the proposed rule changes promote continuity across affiliated exchanges, permitting series of Active Proxy Portfolio Shares and Managed Portfolio Shares to list and trade on the Exchange by meeting the same listing standards as on the Exchange's affiliated market.

Proposed Rule 8.601

The Exchange believes that proposed Rule 8.601 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Active Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities.

Proposed Rule 8.601(d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601(d)(1)(A) provides that, for each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601(d)(1)(B) provides, and the Exchange represents, that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601(d)(1)(C) provides that all Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions. Proposed Rule 8.601(d)(2) provides that each series of Active Proxy Portfolio Shares will be listed and traded subject to application of specified continued listing criteria, as set forth above.

Proposed Rule 8.601(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

8.601(d)(2)(D)(iii) provides that, if the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time, as applicable. The Exchange believes that these proposed halt procedures will help ensure that market participants have fair and uniform access to information regarding a fund's NAV, Proxy Portfolio, or Actual Portfolio and, therefore, reduce the potential for manipulation and help ensure a fair and orderly market in trading of Active Proxy Portfolio Shares.

Proposed Commentary .01 to Rule 8.601 provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .03 to Rule 8.601 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Actual Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio

and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or to the Proxy Portfolio and/or changes thereto.

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange believes proposed Commentary .04 and proposed Commentary .05 will act as a safeguard against any misuse and improper dissemination of non-public information related to a fund's Actual Portfolio or Proxy Portfolio or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or Proxy Portfolio will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purpose. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in series of Active Proxy Portfolio Share and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information

regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.²⁹ For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund Registration Statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that

²⁹ See note 7, *supra*.

they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being “long” or “short” shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³⁰ or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund’s investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that Active Proxy Portfolio Shares will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds,

Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of a series of Active Proxy Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio will be made available to all market participants at the same time. Investors can also obtain a fund’s SAI, Shareholder Reports, Form N-CSR, N-PORT, and Form N-CEN. The prospectus, SAI, and Shareholder Reports are available free upon request from a fund, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services.

Information regarding the previous day’s closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares, equity securities, and ETFs will be available via the CTA high-speed line or from the exchange on which such securities trade. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading in a series of Active Proxy Portfolio Shares will be halted if the circuit breaker parameters in Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. Trading in the shares will be subject to proposed Rule 8.601(d)(2)(D), which sets forth circumstances under which shares of a fund will be halted.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading

of an additional type of actively-managed ETP that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the shares.

Proposed Rule 8.900

The Exchange believes that proposed Rule 8.900 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 8.900(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading. In addition, proposed Rule 8.900(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.³¹ Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session, and will be disseminated to all market participants at the same time. Proposed Rule 8.900(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence

³⁰ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

³¹ Proposed Rule 8.900(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

delisting proceedings under Rule 5.5(m) for, a series of Managed Portfolio Shares under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 8.900(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (e) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (f) if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained; (g) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5.900(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to

halt trading in the series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 8.900(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required. Proposed Rule 8.900(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 8.900(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or SAI.

Proposed Rule 8.900(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliates, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment

Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Proposed Rule 8.900(b)(5) provides that, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 8.900(b)(5) will act as a strong safeguard against any misuse and improper dissemination of non-public information related to a fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purpose. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund Registration Statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

As with some other new ETPs, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by market makers were that

a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the shares' bid/ask price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³² or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.³³

³² See note 30, *supra*.

³³ With respect to trading in the shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active

With respect to trading of the shares, the ability of market participants to buy and sell shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a fund's actual portfolio holdings, (2) the securities in which a fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, its

derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to shares. Market participants will also continuously compare the intraday performance of their hedge to a fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a fund's performance.

Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. In addition, a large amount of information will be publicly available regarding a funds and its shares, thereby promoting market transparency. Quotation and last sale information for the shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for each fund will include a form of the prospectus for the fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a fund may be inadvisable. Specifically, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants

at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under a currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a "Discretionary Halt") and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange's own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. There are certain circumstances where the Investment Company or its agent may request that the Exchange halt trading in the applicable series of Managed Portfolio Shares. Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that

halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) The Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule 8.600(d)(2)(D) related to trading halts in Managed Fund Shares³⁴ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares; and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of a fund and to monitor how closely trading in a fund is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors

³⁴ Rule 8.600(d)(2)(D) provides that "If the Portfolio Indicative Value (as defined in Rule 8.600(c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rule 7.34(a). In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants." These are generally consistent with the proposed Availability of Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, any equity instruments or futures held by a fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁵ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 8.900(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the shares.

Rule 8P Preamble

The Exchange believes that the proposed change to the preamble to Rule 8P would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would facilitate the listing and trading of additional types of actively-managed ETPs on the Exchange, thereby enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace. Because the portfolios of Active Proxy Portfolio Shares and Managed Portfolio Shares are not disclosed on a real-time basis, the Exchange believes that the issues raised by side-by-side trading³⁶

³⁵ The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

³⁶ "Side-by-side trading" refers to the trading of an equity security and its related derivative product at the same physical location, though "not necessarily by the same specialist or specialist firm." Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR-Amex-2002-21) ("Release No. 46213") (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); see also Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR-NYSE-2001-43) (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

are not implicated, and excepting ETPs listed pursuant to proposed Rules 8.601 and 8.900 from the preamble would be consistent with the protection of investors and the public interest.

More specifically, given that the portfolios of series of Active Proxy Portfolio Shares and Managed Portfolio Shares would not be disclosed on a real-time basis and, at most, would be disclosed on a quarterly basis, the Exchange believes that series of Active Proxy Portfolio Shares and Managed Portfolio Shares would not be susceptible to any potential manipulation that could result from such ETPs having a component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The Exchange also believes that excluding ETPs listed pursuant to proposed Rules 8.601 and 8.900 from the preamble would be consistent with the protection of investors and the public interest because series of Active Proxy Portfolio Shares and Managed Portfolio Shares would require a rule filing with the Commission prior to commencement of Exchange listing or trading, and in order for a rule proposal to be consistent with the Act, it must, among other things, further the objectives of Section 6(b)(5) of the Act³⁷ in that it is designed to prevent fraudulent and manipulative acts and practices.

Listed Company Manual Section 302.00

The Exchange believes that its proposal to amend Listed Company Manual Section 302.00 to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601 and Managed Portfolio Shares listed pursuant to proposed Rule 8.900 among the securities exempted from the annual shareholders' meeting requirement is designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system because Active Proxy Portfolio Shares and Managed Portfolio Shares would be subject to the same requirements currently applicable to other 1940 Act-registered investment company securities (e.g., Investment Company Units, Managed Fund Shares, and Portfolio Depositary Receipts). The proposed change would also make Section 302.00 consistent with NYSE Arca Rule 5.3-E, which sets forth substantially similar requirements with respect to annual meetings.

³⁷ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rules facilitate the listing and trading of additional types of actively-managed ETPs on the Exchange, thereby enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2020-77. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-77 and should be submitted on or before October 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-22377 Filed 10-8-20; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16692 and #16693; Delaware Disaster Number DE-00026]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Delaware

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Delaware (FEMA-4566-DR), dated 10/02/2020.

Incident: Tropical Storm Isaias.
Incident Period: 08/04/2020 through 08/07/2020.

DATES: Issued on 10/02/2020.

Physical Loan Application Deadline Date: 12/01/2020.
Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/02/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Kent
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166928 and for economic injury is 166930.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020-22405 Filed 10-8-20; 8:45 am]

BILLING CODE 8026-03-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration Number #16687 Disaster Number #ZZ-00016]

The Entire United States and U.S. Territories; Military Reservist Economic Injury Disaster Loan Program (MREIDL)

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2020.

DATES: Issued on 10/01/2020.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active service.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: This notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2020, small businesses employing military reservists may apply for economic injury disaster loans if those employees are ordered to perform active service for a period of more than 30 consecutive days, and those employees are essential to the success of the small businesses' daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was ordered to perform active service for more than 30 consecutive days in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active service. For information/ applications contact 1-800-659-2955 or visit www.sba.gov.

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 3.000.

The number assigned is 166870.
(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020-22408 Filed 10-8-20; 8:45 am]

BILLING CODE 8026-03-P

³⁸ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

(Catalog of Federal Domestic Assistance Number 59008)

[Disaster Declaration #16690 and #16691; North Dakota Disaster Number ND-00082]

Cynthia Pitts,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020-22404 Filed 10-8-20; 8:45 am]
BILLING CODE 8026-03-P

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA-4565-DR), dated 10/02/2020.

Incident: Severe Storms and Flooding.

Incident Period: 06/29/2020 through 07/01/2020.

DATES: Issued on 10/02/2020. Physical Loan Application Deadline Date: 12/01/2020. Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/02/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Benson, Grand Forks, McKenzie, Mountrail, Nelson, Wells.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166906 and for economic injury is 166910.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16694 and #16695; New York Disaster Number NY-00198]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA-4567-DR), dated 10/02/2020.

Incident: Tropical Storm Isaias.

Incident Period: 08/04/2020.

DATES: Issued on 10/02/2020.

Physical Loan Application Deadline Date: 12/01/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/02/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Nassau, Suffolk.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
<i>For Economic Injury:</i>	

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166948 and for economic injury is 166950.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020-22406 Filed 10-8-20; 8:45 am]
BILLING CODE 8026-03-P

DEPARTMENT OF STATE

[Public Notice 11053]

Exchange Visitor Program—Moratorium on Growth in the Au Pair Program

AGENCY: U.S. Department of State.

ACTION: Notice regarding the Au pair category.

SUMMARY: The U.S. Department of State (Department) is announcing, effective immediately, a moratorium on program growth in the Au pair category of the Exchange Visitor Program. Specifically, the Department will not designate new sponsor organizations or allow program expansions for existing sponsors. The moratorium restricts the size of the category to calendar year 2019 program participant levels. The Department may consider reallocation among existing sponsors of Forms DS-2019 from any sponsors who cease to operate in the Au pair category while the moratorium is in place.

FOR FURTHER INFORMATION CONTACT: Karen S. Hawkins, Director of the Office of Private Sector Exchange Designation, Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA-4E, 2430 E Street NW, Washington, DC 20372. Email: JExchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Au pair category of the Exchange Visitor Program allows foreign nationals the opportunity to live with American host families and participate directly in their home life. In addition, au pairs attend U.S. post-secondary educational institutions, participate in cultural activities, and provide childcare services.

In operation in the United States since 1989, the Au pair program supports public diplomacy efforts by fostering beneficial, personal ties with foreign

youth and offering them a positive view of the United States that they can then share when they return to their home countries. In calendar year 2019, approximately 21,550 au pairs and 15 au pair sponsor organizations participated in the Exchange Visitor Program.

In 2016, the Department initiated a comprehensive review of the Au pair category and its regulations (at 22 CFR 62.31). The Department is currently monitoring the development of litigation related to the category, particularly recent challenges to the federal preemption of local law. To ensure that it appropriately addresses these and other developments, the Department is continuing its research and augmenting its category review. While the Department conducts this review, it will allow currently designated sponsors to continue to operate under their present designations in accordance with the regulations under 22 CFR part 62 and reminds the sponsors of their obligations to comply with those regulations.

Under 22 CFR 62.6 and 62.12 respectively, the Department may, in its sole discretion, designate applicants as new exchange visitor program sponsors and determine the number of Forms DS-2019 it will issue to each sponsor. Consistent with this authority, the Department has decided to neither accept nor approve new applications from entities seeking Au pair program designation at this time. In addition, the Department will not accept or review new or pending expansion requests from au pair sponsors in business during the 2019 calendar year beyond their actual total participants for that year. At its discretion, the Department may decide to reallocate among existing sponsors Forms DS-2019 from any sponsors who cease to operate in the Au pair program once the moratorium is in effect.

The Department expects this moratorium to remain in effect while it completes the above-referenced review of the program and determines next steps, including potential modifications to the program.

Marie Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020-22454 Filed 10-8-20; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 33662 (Sub-No. 2)]

BNSF Railway Company—Trackage Rights Exemption—Omaha Public Power District

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for the acquisition of local trackage rights over an approximately 56.65-mile rail line in Otoe and Lancaster Counties, Neb. (the Line) owned by Omaha Public Power District (OPPD). The Line is comprised of two line segments with noncontiguous mileposts: (1) A line segment between milepost 56.3, near College View, and milepost 4.95, near Nebraska City; and (2) a connecting line segment between milepost 0.7, near Nebraska City, and milepost 6.0, near Arbor.¹

The verified notice states that the purpose of the trackage rights is to permit BNSF to provide service over the Line to OPPD's Nebraska City Power Station and to shippers other than OPPD located along the Line.

The transaction may be consummated on or after October 25, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the acquisition of trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by October 16, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 33662 (Sub-No. 2), must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must

¹ A redacted version of the agreement between BNSF and OPPD was filed with BNSF's verified notice of exemption. BNSF simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information in the unredacted version of the agreement, which BNSF submitted under seal. That motion will be addressed in a separate decision.

be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c), and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at www.stb.gov.

Decided: October 5, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2020-22412 Filed 10-8-20; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36443]

Illinois Central Railroad Company—Trackage Rights Exemption—Terminal Railway Alabama State Docks

Illinois Central Railroad Company (IC), a Class I railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights on the relocated Brookley Lead, owned by the Terminal Railway Alabama State Docks (TASD),¹ which extends from the connection with IC's rail line at Frascati Interlocking near South Lawrence and Baker Streets to the connection at South Broad Street with IC's track into the Brookley Field Complex² (the Complex), a distance of approximately 1.8 miles in Mobile, Ala.³ IC states that the trackage rights will replace IC's existing operating rights over TASD's former Brookley Lead route, which, according to IC, TASD acquired as ancillary track from IC's predecessor in 1982.⁴

The verified notice states that the proposed transaction will preserve IC's rights to access the Complex over the relocated Brookley Lead. The proposed

¹ IC states that TASD is a department of the Alabama State Port Authority and a Class III switching and terminal carrier that operates approximately 75 miles of trackage serving the Port of Mobile and the surrounding area.

² IC states that the Brookley Field Complex is also known as the Mobile Aeroplex at Brookley.

³ An executed copy of the trackage rights agreement between IC and TASD was filed with IC's verified notice of exemption. According to IC, the Brookley Lead does not have mileposts.

⁴ IC states that its predecessor did not seek trackage rights authority for its operations over the Brookley Lead because of the ancillary nature of the trackage involved. IC further states, however, that, because it intends to utilize the rerouted Brookley Lead on an overhead basis to connect its mainline with its own ancillary trackage serving the Complex, it has filed this notice to obtain an exemption for such trackage rights operations.

transaction may be consummated on or after October 25, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by October 16, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36443, must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on IC's representative, Michael J. Barron, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to IC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c), and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at www.stb.gov.

Decided: October 6, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2020-22441 Filed 10-8-20; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

Notice of OMB Approval of Information Collections

AGENCY: Surface Transportation Board.

ACTION: Notice of OMB approval.

SUMMARY: The Office of Management and Budget (OMB) has approved certain Surface Transportation Board (Board or STB) information collections under the Paperwork Reduction Act. This notice lists the approved information collections and provides their OMB control numbers and current expiration dates.

FOR FURTHER INFORMATION CONTACT: Michael Higgins, Deputy Director,

Office of Public Assistance, Governmental Affairs (OPAGAC), and Compliance, at (202) 245-0284 or michael.higgins@stb.gov. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339. You may also direct questions to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001 and to PRA@stb.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations require federal agencies, after receiving OMB approval of information collections, to display and publicize OMB control numbers. In accordance with those requirements, the Board hereby notifies the public that the following information collections, which are published in the Board's regulations, have been approved by OMB.

- OMB Control Number 2140-0003, System Diagram Maps. The expiration date for this information collection required by 49 CFR 1152.10-1152.13 is April 30, 2023.

- OMB Control Number 2140-0020, Arbitration Option Notices. The expiration date for this information collection required by 49 CFR part 1108 is April 30, 2023.

- OMB Control Number 2140-0022, Preservation of Rail Service. The expiration date for this information collection required by 49 CFR part 1151 and 49 CFR 1152.27-1152.29 is February 28, 2023.

- OMB Control Number 2140-0024, Agricultural Contract Summaries. The expiration date for this information collection required by 49 CFR part 1313 is April 30, 2023.

- OMB Control Number 2140-0025, Recordation of Liens. The expiration date for this information collection required by 49 CFR part 1177 is April 30, 2023.

- OMB Control Number 2140-0026, Water Carrier Tariffs. The expiration date for this information collection required by 49 CFR part 1312 is April 30, 2023.

- OMB Control Number 2140-0029, Complaints. The expiration date for this information collection contained in 49 FR part 111 is August 31, 2023.

- OMB Control Number 2140-0030, Catch-all Petitions. The expiration date for this information collection contained in 49 CFR part 1117 is August 31, 2023.

- OMB Control Number 2140-0031, Petitions for Declaratory Order. The expiration date for this information collection allowed under 5 U.S.C. 554(e) and 49 U.S.C. 721 is August 31, 2023.

- OMB Control Number 2140-0036, Dispute Resolution Procedures. The expiration date for this information collection contained in 49 CFR part 1109 is August 31, 2023.

Publication of this notice satisfies the requirement that the Board "display" OMB control numbers with respect to the above-listed information collections, as provided in 5 CFR 1320.5(b)(2)(ii).

Dated: October 5, 2020.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2020-22374 Filed 10-8-20; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects. **DATES:** By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is 150 days from the date of publication. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416-2734; email: carlos.swonke@txdot.gov. TxDOT's normal business hours are 8:00 a.m.-5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting TxDOT at the address provided above.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319);

Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)-300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. Upland Avenue from 66th Street to 114th Street in Lubbock, Lubbock County, Texas. The improvements will consist of widening the existing two-lane roadway to a five-lane modified principal arterial typical section (two lanes in each direction with a center turn lane), drainage improvements, shared-use paths, and right turn lanes at designated cross streets. The project length is 3.16 miles in length. The addition of travel lanes and the shared-use paths along Upland Avenue will increase mobility and safety for those traveling along Upland Avenue, which will encourage the use of local services and facilities. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 7, 2020, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Lubbock District Office at 135 Slaton Road, Lubbock, TX 79404; telephone: 806–748–4472.

2. University Boulevard from FM 1460 East to SH 130, Williamson County, Texas. The project will widen University Boulevard from a two-lane to a four-lane roadway with 4-foot-wide inside shoulders, 10-foot-wide outside shoulders and a grassy median. The project is approximately 3.45 miles in length. The actions by TxDOT and

Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 16, 2020 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; (512) 832–7000.

3. SH 5 from South of FM 1378 to CR 275 in Collin County, Texas. The proposed project would reconstruct and widen SH 5 within the project limits. From Country Club Road to Spur 399, the existing 2-lane rural roadway will be reconstructed to a 4-lane (6-lan ultimate) divided urban roadway with raised curbed and a variable-width median. From Spur 399 to Industrial Boulevard (FM 546), the existing 4-lane divided rural roadway with depressed median will be reconstructed to a 6-lane divided urban roadway with a 17-foot curbed median. From Industrial Boulevard (FM 546) to south of N Tennessee St, the existing 4-lane divided with curbed median and 4-lane divided with a continuous left turn lane urban segment will be reconstructed to a 4-lane divided urban roadway with 17-foot curbed median. From south of N Tennessee St south of Melissa Road, the existing 2-lane rural roadway will be reconstructed to a 4-lane divided urban roadway with curbed, 42-foot median. The proposed project includes reconfiguration of the SH 399/SH 5 interchange near the southern project limits to include a flyover bridge from SS 399 South to SH 5 South. The total project length is approximately 7.22 miles. The purpose of the proposed project to improve safety and mobility, and update the roadway to current design and safety standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 21, 2020, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777E. Highway 80, Mesquite, TX 75150; telephone (214) 320–4480.

4. US 59 at FM 1794, Panola County, Texas. The proposed project would include the construction of overpass bridges, one-way frontage roads, ramps and turnarounds on US 59 at FM 1794. Reconstruction and widening of approximately 1.2 miles of the US 59 main lanes and 0.3 miles of FM 1794 is

also proposed. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination approved on July 31, 2020, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Atlanta District Office at 701 East Main St., Atlanta TX 75551; telephone (903) 799-1306.

5. FM 1641 from FM 548 to FM 148 and FM 548 from FM 1641 to US 80 in Kaufman County, Texas. The proposed project would reconstruct and widen from a 2-lane to a 4-lane urban divided roadway with a raised median. The proposed facility would consist of 4 lanes (2 in each direction) with a raised median (FM 548 and FM 1641 from FM 548 to IH 20), and of 4 lanes (2 in each direction) with a two-way center left turn lane for FM 1641 from IH 20 to FM 148. The total project length is approximately 5.6 miles. The purpose of the proposed project is to provide congestion relief, improve operations of the roadway, improve safety, increase mobility, and provide improved connectivity to the area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 21, 2020 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777E. Highway 80, Mesquite, TX 75150; telephone (214) 320-4480.

6. RM 620 from SH 71 to Hudson Bend Road, Travis County, Texas. The project will widen the existing four-lane divided rural roadway to a six-lane divided urban roadway, add raised medians, and add a continuous shared-use path along both sides of the road throughout the corridor. The project is approximately 9.2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 3, 2020, the Finding of No Significant Impact (FONSI) issued on August 3, 2020, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; (512) 832-7000.

7. IH 10/US 69 Interchanges from Walden Road (CR 131) to 7th Street in Jefferson County, Texas. The proposed project includes reconstructing and expanding I-10 and US 69 where they converge in the city of Beaumont. The project would widen the existing I-10 from Walden Road (CR 131) to 7th Street and existing US 69 from Fannett Road (SH 124) to 11th Street. Between the Cardinal Drive and Eastex Freeway interchanges, the roadway would be widened in each direction from four lanes to five lanes. The roadway approaches to the Cardinal Drive and Eastex Freeway interchanges on I-10 and US 69 would be widened in each direction from two lanes to three lanes. The project also includes new frontage roads for continuity throughout the limits, relocating I-10 ramps, and constructing two-lane direct connectors in each direction where I-10 and US 69 converge within the project limits. In addition, the project includes the removal of the Maury Meyers Bridge (Liberty/Laurel Overpass) to address a height constraint for freight movements and includes upgrading drainage infrastructure to current design standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 04, 2020, the Finding of No Significant Impact (FONSI) issued on August 04, 2020 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Beaumont District Office at 8350 Eastex Freeway, Beaumont, Texas 77708; telephone (409) 898-5732. The EA and FONSI can also be viewed and downloaded from the following website: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/beamont/080720.html>.

8. State Loop 335 from SW 9th Avenue to FM 1719, in Potter County, Texas. The proposed project will upgrade the existing State Loop (SL) 335 roadway to a new controlled access highway facility with four grade-separated main lanes, frontage roads, connecting ramps, and accommodation of future expansion to an ultimate six-lane section within proposed ROW. The project will also include a new interchange to accommodate a future road and add bicycle and pedestrian facilities. The total project length is approximately 6.0 miles long. This project will provide expanded capacity and improved efficiency of the roadway to address local and regional mobility concerns, as well as freight mobility and

capacity concerns. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 18, 2020, the Finding of No Significant Impact (FONSI) issued on August 18, 2020 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the TxDOT Amarillo District Office at 5715 Canyon Drive, Amarillo, TX 79110; telephone (806) 356-3200.

9. TxDOT is proposing to reconstruct and add capacity to Interstate Highway (I) 20, I-820 and United States Highway (US) 287 including three major interchanges in southeast Tarrant County, Texas, within the cities of Arlington, Forest Hill, Fort Worth, and Kennedale. The major interchanges are the I-820/US 287 Interchange, the I-20/I-820 Interchange, and the I-20/US 287 Interchange. This project spans approximately 16 miles and would add main lanes and frontage roads to I-20 from Forest Hill Drive to Park Springs Boulevard, I-820 from I-20 to Brentwood Stair Road, and US 287 from Bishop Street to Sublett Road. New frontage roads would be constructed at various locations, and bicycle and pedestrian accommodations would be provided throughout. The project is collectively referred to as the "Southeast Connector." The purpose of the project is to reduce traffic congestion, improve mobility and connectivity, and provide continuous pedestrian/bike facilities. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 2, 2020, the Finding of No Significant Impact (FONSI) issued on September 3, 2020, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Fort Worth District Office at 2501 SW Loop 820, Fort Worth, Texas, 76133; and telephone (817) 370-6744. The EA and FONSI can also be viewed and downloaded from the following website: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/fort-worth/090420.html>.

10. FM 664 from US 287 to Westmoreland Road in Ellis County, Texas. The proposed project would reconstruct, realign, and widen FM 664 within the proposed limits. Improvements would include the expansion of the current 2-lane rural roadway to a 4-lane urban roadway

(ultimate 6-lanes) with a raised median. Improvements would consist of 12-foot-wide travel lanes, 14-foot-wide outside shared-use lanes, and 6-foot sidewalks. The length of the proposed project is approximately 8.08 miles. The purpose of the proposed project is to reduce traffic congestion on the existing roadways; to improve operations of the roadway; to increase mobility (including pedestrian and bicycle accommodations); and, to provide improved connectivity to the area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 15, 2020, Finding of No Significant Impact (FONSI) issued on September 15, 2020 and other documents in the TxDOT project file. The EA and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

11. SH 332 from FM 521 to SH 288 in Brazoria County, Texas. The project proposes to reconstruct and widen the existing facility from two to four lanes (two lanes each direction) from FM 521 to FM 2004, and from four to six lanes (three lanes in each direction) from FM 2004 to SH 288. Reconstruction or replacement of bridges over Buffalo Camp Bayou and an adjacent diversion channel, as well as sidewalks on both sides of the roadway for the length of the project are also proposed. A new drainage channel from SH 332, at a location approximately 800 feet west of Division Street, south to the Brazos River is also included. The project requires approximately 70.4 acres of additional ROW, and is approximately 5.3 miles in length. The actions by TxDOT and Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) approved on September 15, 2020, the Finding of No Significant Impact (FONSI) issued on September 16, 2020, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802-5076.

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 28, 2020.

Michael T. Leary,

*Director, Planning and Program Development,
Federal Highway Administration.*

[FR Doc. 2020-21883 Filed 10-8-20; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0069]

Commercial Driver's Licenses; Expansion of Military Occupational Specialties in the Pilot Program To Allow Persons 18, 19, and 20 Years Old With Military Driving Experience To Operate Commercial Motor Vehicles in Interstate Commerce

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of pilot program; request for comments.

SUMMARY: As required by the Fixing America's Surface Transportation (FAST) Act, FMCSA implemented a pilot program to allow individuals aged 18, 19 and 20 to operate commercial motor vehicles (CMVs) in interstate commerce if they have received heavy-vehicle driver training in certain Military Occupational Specialties (MOS) while in military service. FMCSA proposes to expand the MOS eligible to participate in this pilot program to provide additional service members with the opportunity to transition to commercial driving jobs.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0069 using any of the following methods:

- **Federal eRulemaking Portal:** *www.regulations.gov*. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov*, including any personal information included in a

comment. Please see the *Privacy Act* heading below.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, by email at *selden.fritschner@dot.gov*, or by telephone at 202-366-0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. In this notice, FMCSA requests certain information, but comments are not limited to responses to those requests.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0069), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov*, put the docket number, "FMCSA-2016-0069" in the "Keyword" box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the

facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA–2016–0069” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

Under 49 U.S.C. 31315 and 31136(e), FMCSA is authorized to grant waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) and to conduct pilot programs. A waiver is limited to a period of 3 months and may be granted without requesting public comment (49 U.S.C. 31315(a)). By contrast, an exemption may remain in effect for up to 5 years¹ and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying it (49 U.S.C. 31315(b)).

Pilot programs under 49 U.S.C. 31315(c) may include one or more exemptions to allow for the testing of innovative alternatives to certain FMCSRs. FMCSA must publish in the **Federal Register** a detailed description of each pilot program, including the exemptions being considered, and provide notice and an opportunity for public comment before the effective date of the program. The Agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. The maximum duration of pilot programs is 3 years from the starting date.

¹ Section 5206 of the Fixing America’s Surface Transportation (FAST) Act amended 49 U.S.C. 31315(b)(2) to extend the maximum duration of an exemption from 2 years to 5 years, effective October 1, 2015.

At the conclusion of each pilot program, FMCSA must report to Congress its findings, conclusions, and recommendations, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety, and improve compliance with the FMCSRs.

Section 5404 of the FAST Act (Pub. L. 114–94, 129 Stat. 1312, 1549, Dec. 4, 2015) requires the Secretary of Transportation to conduct a commercial driver pilot program to “. . . study the feasibility, benefits, and safety impacts of allowing a covered driver to operate a commercial motor vehicle in interstate commerce.” A “covered driver” is currently defined as a member or former member of the armed forces or reserve and National Guard components between the ages of 18 and 21, who is qualified in an MOS to operate a CMV or similar vehicle. A driver participating in the program may not transport passengers or hazardous cargo, or operate a vehicle in a “special configuration.”

Section 5404 requires the pilot program to collect and analyze data regarding crashes involving covered drivers participating in the program, and drivers under the age of 21 operating CMVs in intrastate commerce.

Section 5404 also requires the Secretary to “. . . conduct, monitor, and evaluate . . .” the pilot program in consultation with a working group consisting of representatives of the armed forces, industry, drivers, safety advocacy organizations, and State licensing and enforcement officials. The working group must review the data collected and make recommendations to the Secretary regarding the feasibility, benefits, and safety impacts of allowing a covered driver to operate in interstate commerce. (See Section V of this notice.)

III. Background

On August 22, 2016, FMCSA published a notice that described the proposed pilot program required by the FAST Act and solicited public comment (81 FR 56745). On July 6, 2018, the Agency published a further notice responding to the comments received and outlining the details of the pilot program (83 FR 31633). Please refer to those two documents for a comprehensive discussion of the pilot program and the 7 MOS that currently qualify for the pilot program.

IV. Armed Forces Heavy-Vehicle Driver Training Programs

Four branches of the Department of Defense—the Army, Air Force, Navy, and Marine Corps—include an MOS

specifically focused on motor transport operations and consequently provide specific training to their personnel on how to operate heavy-duty vehicles. Additionally, there are three MOS classifications with additional training required for other types of heavy-duty specialty vehicles (e.g., gasoline haulers, construction vehicles, and military equipment transport oversize/overweight [non-track] vehicles).

As such, the seven original Military Occupational Specialties approved for the Pilot program in the July 6, 2018, **Federal Register** notice are as follows:

- Army
 - 88M Motor Transport Operator
 - 92F Fueler
- Marine Corps
 - 3531 Motor Vehicle Operator
- Navy
 - E.O. Equipment Operator
- Air Force
 - 2TI Vehicle Operator
 - 2FO Fueler
 - 3E2 Pavement and Construction Equipment Operator

FMCSA is proposing to expand the list of eligible MOS to include additional MOS classifications for which heavy-duty vehicle operation is a core duty and for which heavy-vehicle training is a requirement. Those additional MOS are as follows:

- Army
 - 12B Combat Engineer
 - 13B Field Artillery
 - 13P MLRS (Multiple Launch Rocket System)
 - 88H Transportation Cargo
 - 14T Patriot Launching Station Operator
- Marine Corps
 - 3537 After 3531 achieves the rank of SSGt
 - 0811 Field Artillery Cannoneer
 - 1371 Combat Engineer
 - 1345 Engineer Equipment Operator

Each of these proposed additions requires drivers to complete classroom and road (skills) training prior to receiving the MOS designation, as well as ongoing training and routine recertification on heavy vehicle operations. Military personnel in these MOS receive continuous training during their service period to maintain proficiency. Additionally, retesting is conducted annually, at a minimum.

The core training agenda for each of these MOS includes:

- Classroom Training and Preparedness:
 - Ensuring the driver is in possession of a valid State driver’s license;
 - Confirming the physical qualifications for a large truck driver;
 - Providing training equivalent to the

- civilian commercial learner's permit (CLP);
- Training directed at the driver responsibilities and Government liability;
- Awareness of State, local, host nation, and post traffic regulations and laws;
- Equipment inspection and maintenance;
- Accident reporting procedures;
- Vehicle inspection; preventive maintenance checks and services;
- Crash avoidance;
- Environmental considerations;
- Night driving;
- Response to emergency situations; vehicle malfunctions; and
- Route planning.
- Road Training:
 - Vehicle characteristics;
 - Parking and backing;
 - Operating systems;
 - Basic control tasks;
 - Road conditions;
 - Size and weight;
 - Negotiating traffic;
 - Yielding right of way;
 - Intersections;
 - Turns;
 - Following distance;
 - Negotiating curves;
 - Adverse weather;
 - Skids; and
 - Speed.

To obtain an MOS credential, both for the MOS currently eligible for the Agency's pilot program, and for the additional MOS proposed in this notice, each driver must pass the driver skills test, which includes the following components:

- Forward stop;
- Straight line backing;
- Alley dock parking;
- Eight left and eight right turns;
- A straight section of urban business streets;
- Two through intersections;
- Two railway crossings;
- Two curves, one to the left and one to the right;
- A two-lane rural or semi-rural road;
- Expressway driving, including lane changes and higher speeds; and
- Gear shifting for:
 - Downgrade;
 - upgrade;
 - downgrade for stopping;
 - upgrade for stopping;
 - underpass or low clearance, and
 - one bridge.

The training requirements for the nine new proposed MOS are equivalent to those required for the original seven MOS approved for the pilot program. As such, FMCSA believes that the safety of the pilot program will not be adversely

affected by inclusion of these additional MOS in the program. These additional MOS are being included at the recommendation of the Army and Marine Corps to provide additional service members with the opportunity to transition to commercial driving jobs. These additional MOS were not included previously because FMCSA was not aware that these classifications received heavy-vehicle training and recurrent training equivalent to the training the original MOS receive. By increasing the MOS, FMCSA anticipates there will be an additional 30,000 drivers between the ages of 18 and 21 who are eligible to participate in the Under 21 Military CDL Pilot Program.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data would be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submitted its IC analysis and burden estimate to the Office of Management and Budget (OMB) as a formal information collection request (ICR) for this pilot program and received approval on April 23, 2019. The ICR expires on April 30, 2022, and can be found under OMB Control Number 2126–0068.

VI. Removal From the Program

FMCSA reserves the right to remove any motor carrier or driver from the pilot program for reasons including, but not limited to, failing to meet any of the requirements of the program.

VII. Request for Public Comments

FMCSA requests comments on the need for, and the advisability of, including the additional MOS listed above in the pilot program. Because the questions asked in the 2016 **Federal Register** notice were addressed in the 2018 notice, we are not seeking responses on those issues.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–22401 Filed 10–8–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0106]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Nauto, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the Nauto, Inc. (Nauto) application for a limited 5-year exemption to allow its multi-sensor device to be mounted lower in the windshield on commercial motor vehicles (CMV) than is currently permitted. The Agency has determined that lower placement of the multi-sensor device would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would likely achieve a level of safety equivalent to, or greater than, the level of safety provided by the regulation.

DATES: This exemption is applicable October 9, 2020 and ending October 9, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The online Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs).

FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Nauto's Application for Exemption

Nauto applied for an exemption from 49 CFR 393.60(e)(1) to allow its multi-sensor device to be mounted lower in the windshield than is currently permitted by the Agency's regulations to allow optimal functionality of the multi-sensor device. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1)(i) of the FMCSRs prohibits obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield, and must be outside the driver's sight lines to the road and highway signs and signals. However, § 393.60(e)(1)(i) does not apply to vehicle safety technologies, as defined in § 393.5, that include "a fleet-related incident management system, performance or behavior management system, speed management system, forward collision warning or mitigation system, active cruise control system, and transponder." Section 393.60(e)(1)(ii) requires devices with vehicle safety technologies to be mounted (1) not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers, or (2) not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers, and (3) outside the driver's sight lines to the road and highway signs and signals.

In its application, Nauto states that its technology uses a real-time, AI-powered Driver Behavior Learning Platform that utilizes a sophisticated road- and driver-facing, multi-sensor device equipped with interior and exterior image sensors on the windshield that continuously analyze driving activities. Nauto states that the interior image sensors identify and analyze driver actions and objects to detect distracted, drowsy, and risky driving, while the exterior image sensors detect threats such as vehicles ahead. In addition to the visual risks detected through AI on the image sensors, Nauto fuses all sensor data, including vehicle speed, location, and telemetry data, to build a complete, real-time risk assessment and predict risky events in context. Nauto states that its technology helps predict, prevent and reduce distracted/risky driving, alerts drivers in real time, and allows for on-demand coaching of drivers. The technology also allows for the monitoring of fleets and drivers, which assists companies in identifying safety problems that can inform safety programs and policies.

Nauto states that its technology "cannot function properly unless the device is mounted on a windshield at a location that allows the multiple sensors to have sufficient viewing angles to both the driver and exterior environment surrounding the vehicle and to ensure visibility of sensors to the roadway ahead the sensor placement must be within the area swept by the windshield wipers." While the FMCSRs permit vehicle safety technologies to be placed within the swept area of the windshield under specified conditions, Nauto states that in some vehicles, its multi-sensor device must be placed lower than permitted by the regulation. Specifically, Nauto notes that its device is:

. . . typically placed in the top of the center of the vehicle's windshield. When possible, the device is located just below the vehicle's headliner, outside of the driver's field of vision. Sometimes such a placement is not possible, and the device is placed on either side of the mirror, no more than four inches below the upper edge of the area swept by the windshield wipers. But in some vehicles, the device must be placed more than four inches below the upper edge of the area swept by the windshield wipers . . . The device's placement is never within the driver's sight lines to the road and to highway signs and signals, and would not impair a driver's ability to safely operate the vehicle. In the largest vehicles, the device may be placed up to eight inches below the upper edge of the area swept by the wipers, but in no event in a location that could impair a driver's ability to safely operate the vehicle.

Without the proposed exemption, Nauto states that it will not be able to deploy its multi-sensor device in a manner that would provide the range of benefits achievable with the technology because for the device to fully function, placement must be, in some cases, outside of the mounting area allowed by the FMCSRs. The exemption would apply to all CMVs equipped with Nauto's multi-sensor device mounted on the windshield. Nauto believes that mounting the system as described will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Comments

FMCSA published a notice of the application in the **Federal Register** on April 2, 2020, and asked for public comment (85 FR 18632).

The Agency received no comments on the exemption application.

FMCSA Decision

FMCSA has evaluated the Nauto exemption application. In certain vehicles, the multi-sensor device must be located up to 8 inches below the top of the area swept by the windshield wipers. The device needs to be mounted in this location to ensure that the multiple sensors have sufficient viewing angles to both the driver and exterior environment surrounding the vehicle, and to ensure the clear visibility of the sensors to the roadway ahead. The Agency believes that granting the exemption to allow placement of the multi-sensor device lower than currently permitted by Agency regulations will likely provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the multi-sensor device would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the mounting location 8 inches below the upper edge of the windshield and out of the driver's normal sightline will be reasonable and enforceable at roadside. In addition, the Agency believes that the use of the multi-sensor device by fleets is likely to improve the overall level of safety to the motoring public.

This action is consistent with previous Agency action permitting the placement of similarly-sized devices on

CMVs outside the driver's sight lines to the road and highway signs and signals. FMCSA is not aware of any evidence showing that the installation of other vehicle safety technologies mounted on the interior of the windshield has resulted in any degradation in safety.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning October 9, 2020 and ending October 9, 2025. During the temporary exemption period, motor carriers will be allowed to operate CMVs equipped with Nauto's multi-sensor device in the approximate center of the top of the windshield and such that the bottom edge of the multi-sensor device housing is approximately 8 inches below the upper edge of the area swept by the windshield wipers, outside of the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs equipped with Nauto's multi-sensor device are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to,

adopt the same exemption with respect to operations in intrastate commerce.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020-22361 Filed 10-8-20; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0133]

Notice of Consultation Pursuant to Section 106 of the National Historic Preservation Act; Decommissioning of the Nuclear Ship SAVANNAH

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The National Historic Preservation Act (NHPA) requires the Maritime Administration (MARAD) to develop a Programmatic Agreement (PA) to decommission the N.S. SAVANNAH's (NSS) nuclear power plant and subsequent license termination with the Nuclear Regulatory Commission (NRC). MARAD is considering the effect of this undertaking on the NSS as an historic property, and by this notice is seeking public comment.

DATES: Comments must be received on or before November 23, 2020. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0133 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0133 and follow the instructions for submitting comments.
- *Email:* Rulemakings.MARAD@dot.gov. Include MARAD-2020-0133 in the subject line of the message and provide your comments in the body of the email or as an attachment.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0133, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing

address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

Docket: For access to the online docket to read background documents or comments received, go to <http://www.regulations.gov> and search "MARAD-2020-0133."

FOR FURTHER INFORMATION CONTACT:

Erhard W. Koehler, (202) 680-2066 or via email at marad.history@dot.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to Department of Transportation, Maritime Administration, Office of Chief Counsel, Division of Legislation and Regulations, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Built in 1959, NSS was the world's first nuclear-powered merchant ship and served as a signature element of President Eisenhower's Atoms for Peace program. While in service, NSS demonstrated the peaceful use of atomic power as well as the feasibility of nuclear-powered merchant vessels. The vessel was retired from active service in 1970 and registered as a National Historic Landmark in 1991. NSS is currently part of MARAD's National Defense Reserve Fleet (NDRF) in retention status. Additional information regarding the vessel is available at <https://www.maritime.dot.gov/nssavannah>.

MARAD is decommissioning the NSS's nuclear power plant, a process that will remove the plant systems, equipment, and components for disposal, which will result in termination of MARAD's Nuclear Regulatory Commission (NRC) license and disposition of the vessel. MARAD has determined that this Undertaking will cause an adverse effect to the NSS, and is developing a PA with the Advisory Council on Historic Preservation (ACHP), the Maryland State Historic Preservation Officer

(SHPO), and other consulting parties in compliance with the NHPA and its implementing regulations. MARAD has determined that a PA is a more effective and efficient means to implement consultation under Section 106 of the NHPA due to the Undertaking's complexity and unknown outcome. As part of the Section 106 and PA process, MARAD, ACHP, SHPO, and other consulting parties, are exploring and considering all NSS disposition options and alternatives that could avoid, minimize, or mitigate these impacts once the vessel's nuclear power plant is decommissioned and the NRC license is terminated.

Pursuant to 36 CFR part 800.2(d)(2), this serves as MARAD's notification concerning this Undertaking and its effects on the NSS and welcomes public input and comments.

Public Participation

How long do I have to submit comments?

We are providing a 45-day comment period.

How do I prepare and submit comments?

Your comments must be written in English.

To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing MARAD to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Search using the MARAD docket number and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's

guidelines may be accessed at http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

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 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 notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. MARAD will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this interim final rule. Submissions containing CBI should be sent to the email address provided in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. Any comments MARAD receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see

the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

(Authority: 49 CFR Sections 1.92 and 1.93)

* * * * *

Dated: October 6, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-22416 Filed 10-8-20; 8:45 am]

BILLING CODE 4910-81-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 November 9, 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.

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 October 1, 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			
21110-N	Norfolk Southern Railway Company.	174.24, 174.26	To authorize the use of electronic means to maintain and communicate on-board train consist information in lieu of paper documentation when hazardous materials are transported by rail. (mode 2)
21112-N	Best Sanitizers, Inc	173.154(b)(1)	To authorize the transportation in commerce of certain corrosive materials as limited quantities despite exceeding the quantity limitations specified in 173.154. (mode 1)
21113-N	Spaceflight, Inc	173.185(a)(1)	To authorize the transportation in commerce of low production lithium batteries contained in spacecraft by cargo-only aircraft. (mode 4)
21114-N	Federal Cartridge Company.	172.203(a), 173.63(b)(2)	To authorize the transportation in commerce of small arms ammunition in a loose and unoriented configuration as a limited quantity. (modes 1, 2, 3, 4, 5)
21118-N	Government Of Thailand, Royal Thai Navy.	172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 177.848(f).	To authorize the transportation in commerce of explosives by cargo aircraft which is forbidden in the regulations. (mode 4)

[FR Doc. 2020-22365 Filed 10-8-20; 8:45 am]

BILLING CODE 4909-60-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 November 9, 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.

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 October 1, 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			
10814-M	Spellman High Voltage Electronics Corporation.	173.302a	To modify the special permit to update the reference drawings in the permit.
11859-M	Cobham Mission Systems Orchard Park Inc.	173.301(f), 178.65, 173.302(a)(1)	To modify the special permit to authorize the use of Argon in a missile gas storage system.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14919-M	Joyson Safety Systems Acquisition LLC.	173.301(a)(1), 173.302a, 178.65(f)(2) ...	To modify the special permit to remove the five year from manufacture date restriction on transporting the articles.
15372-M	Equipo Automotriz Americana, S.a. De C.v.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year from manufacture restriction on transporting the articles.
15821-M	Crane Instrumentation & Sampling, Inc.	173.301(a), 173.302a, 173.304a	To modify the special permit to update the cylinder specification drawings and add a 150 cc cylinder.
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 authorize an additional Division 4.3 material.
20588-M	Nantong Tank Container Co., Ltd.	178.274(b)(1), 178.276(a)(2), 178.276(b)(1).	To modify the special permit to authorize a reduction in minimum design pressure and to increase the maximum water capacity.
20964-N	Stanley Black & Decker, Inc.	172.200, 172.600, 172.700(a), 173.185(b).	To authorize the transportation in commerce of the grantee's lithium batteries in direct support of a principle business other than transportation in commerce with alternative hazard communications and training requirements.
20989-M	DGM Italia Srl	173.56(b), 173.185(a)	To modify the special permit to authorize the use of ATA 300 specification packaging.
21012-N	Praxair Distribution, Inc	172.203(a), 180.209	To authorize the transportation in commerce DOT 3AA cylinders that have been re-qualified using 100% UE examination in lieu of internal visual inspection and hydrostatic pressure testing as prescribed at paragraph § 180.209(a). Each cylinder successfully passing requalification using 100% UE examination will have its retest interval extended to at least once every 15 years.
21073-N	Bolloré Logistics Germany GmbH.	172.101(j), 172.300, 172.400, 173.301, 173.301, 173.302a(a)(1), 173.304a(a)(2).	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2, 2.3 liquefied and compressed gases and other hazardous materials for use in specialty cooling applications such as satellites and military aircraft.
21079-N	Korean Airlines Co., Ltd ...	172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain explosives which are forbidden for transport by cargo only aircraft.
21100-N	K7 Design Group LLC	172.301(a)(1)	To authorize the transportation in commerce of ethyl alcohol based hand sanitizer in non-bulk packages without proper marking.
21105-N	US EPA Region 5	172.102(c)(1), 173.185(f)(1), 173.185(f)(3).	To authorize the transportation in commerce of certain damaged, defected, or recalled lithium batteries and batteries of other chemistries in the same outer packaging.
21107-N	Walmart Inc.	172.301(a)(1), 172.301(c), 172.301(d), 172.312(a)(2).	To authorize the transportation in commerce of ethanol-based hand sanitizer in non-bulk combination packages without certain markings.
21122-N	Environmental Protection Agency.	.....	To authorize the transportation in commerce of hazardous materials in support of the recovery and relief operations from and within California fire disaster areas under conditions that may not meet the Hazardous Materials Regulations (HMR).
21124-N	Environmental Protection Agency.	.....	To authorize the transportation in commerce of hazardous materials in support of the recovery and relief operations from and within Oregon fire disaster areas under conditions that may not meet the Hazardous Materials Regulations (HMR).

SPECIAL PERMITS DATA—Denied**SPECIAL PERMITS DATA—Withdrawn**

21047-N	Tesla, Inc	173.185(b)(1)	To authorize the transportation in commerce of lithium cells and batteries in alternative packaging.
21065-N	Advance Stores Company Incorporated.	172.704, 173.159	To authorize the transportation in commerce of lead acid batteries and limited quantities of hazardous materials by third-party delivery services without requiring carrier training.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21109-N	County of Sonoma .....	.....	To authorize the transportation in commerce of certain hazardous materials in support of the recovery and relief operations from and within the fire disaster areas in California under conditions that may not meet the Hazardous Materials Regulations (HMR).
21111-N	County of Solano .....	.....	To authorize the transportation in commerce of certain hazardous materials in support of the recovery and relief operations from and within the fire disaster areas in California under conditions that may not meet the Hazardous Materials Regulations (HMR).
21116-N	The Elco Corporation	173.35(e)	To authorize the transportation of certain hazmat where two or more closure systems are fitted in series, the system nearest to the hazardous material being carried must be closed first.

[FR Doc. 2020-22364 Filed 10-8-20; 8:45 am]

BILLING CODE 4909-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permit

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 October 26, 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.

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 October 1, 2020.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
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Special Permits Data

11818-M	Thermavant Technologies, LLC.	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize mass spectrometer leak inspection as a means of verifying the integrity of cylinder welds. (modes 1, 3, 4)
15689-M	Mercedes-Benz Research & Development North America, Inc.	172.200, 172.301(c), 177.834(h)	To authorize a larger cylinder to be utilized in the test equipment. (mode 1)
16011-M	Americase, LLC	172.200, 172.300, 172.600, 172.700(a), 172.400, 172.500, 173.185(f).	To modify the special permit to authorize shipment of damaged/defective batteries up to 1500Wh without full hazmat training of employees. (modes 1, 2, 3)
16163-M	The Dow Chemical Company.	172.203(a), 172.302(c), 180.605(h), 180.605(h)(3).	To modify the special permit to authorize additional liquid hazmat to be offered for transportation. (modes 1, 2, 3)
16311-M	Government Of Thailand, Royal Thai Navy.	.....	To modify the permit to include Div 1.4 materials that are in a quantity that exceed the package limitations in Column (9B) of the 172.101 HMT. (mode 4)
20294-M	The Dow Chemical Company.	172.302(c), 173.203(a), 180.605(h)(3) ..	To modify the special permit to authorize a higher maximum allowable working pressure for UN T11 portable tanks and to authorize two additional hazardous materials. (modes 1, 2, 3)

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20301-M	Tesla, Inc	172.101(j), 173.185(a)(1), 173.185(b)(3)(i), 173.185(b)(3)(ii).	To modify the special permit to authorize a new pressure relief design and to increase cell energy. (mode 4)
20705-M	Exhaust Center, Inc	177.834(h), 178.700(c)(1)	To modify the special permit to authorize three new tank designs. (mode 1)
20851-M	Call2recycle, Inc	172.200, 172.600, 172.700(a)	To modify the special permit to authorize rail transport. (modes 1, 2)
21105-M	US EPA Region 5	172.102(c)(1), 173.185(f)(1), 173.185(f)(3).	To modify the special permit to authorize layering fire suppressant between a layer of button cells rather than around each individual cell. (mode 1)

[FR Doc. 2020-22363 Filed 10-8-20; 8:45 am]
BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service (IRS) Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

DATES: Comments on this matching notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comments are received during the period allowed for comment, the re-established agreement will be effective January 1, 2021, provided it is a minimum of 30 days after the publication date.

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, January 1, 2021 through June 30, 2022. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

ADDRESSES: Inquiries may be sent by email to *glds.cmppa@irs.gov* or by mail to the Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela,

Program Manager, 2970 Market Street, BLN: 2-Q08.124, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2-Q08.124, Philadelphia, PA 19104. Telephone: 267-466-5564 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published at 83 FR 27082-083 (June 11, 2018). The Nevada Department of Health and Human Services is no longer participating in the DIFSLA Computer Matching Program. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Participating Agencies: Name of Recipient Agency: IRS.

Categories of records covered in the match: Information returns (e.g., Forms 1099-DIV, 1099-INT, and W-2G) filed by payers of unearned income in the IRS Information Returns Master File (IRMF) (Treasury/IRS 22.061).

Name of source agencies and categories of records covered in the match:

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. Department of Veterans Affairs: Veterans Benefits Administration—Compensation, Pension and Education and Rehabilitation Records—VA, 58 VA 21/22; and Veterans Health Administration—Healthcare Eligibility Records, 89 VA 19; and
2. Social Security Administration, Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, (60-0103).

B. State agencies expected to participate using non-federal systems of records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health & Social Services, Division of Public Assistance
4. Arizona Department of Economic Security
5. Arkansas Department of Human Services
6. California Department of Social Services
7. Connecticut Department of Social Services
8. Delaware Department of Health & Social Services
9. District of Columbia Department of Human Services
10. Florida Department of Children & Families
11. Georgia Department of Human Services, Division of Family and Children Services
12. Hawaii Department of Human Services
13. Idaho Department of Health & Welfare
14. Illinois Department of Human Services
15. Indiana Family & Social Services Administration
16. Iowa Department of Human Services
17. Kansas Department for Children and Families
18. Kentucky Cabinet for Health and Family Services
19. Louisiana Department of Health and Family Services
20. Louisiana Department of Children and Family Services
21. Maine Department of Health & Human Services
22. Maryland Department of Human Services
23. Massachusetts Department of Transitional Assistance
24. Michigan Department of Health & Human Services
25. Minnesota Department of Human Services
26. Mississippi Department of Human Services
27. Mississippi Division of Medicaid
28. Missouri Department of Social Services
29. Montana Department of Public Health & Human Services

30. Nebraska Department of Health & Human Services
31. New Hampshire Department of Health & Human Services, Division of Economic & Housing Stability, Bureau of Family Assistance
32. New Jersey Department of Human Services
33. New Mexico Human Services Department
34. New York State Office of Temporary & Disability Assistance
35. North Carolina Department of Health & Human Services
36. North Dakota Department of Human Services
37. Ohio Department of Job and Family Services
38. Ohio Department of Medicaid
39. Oklahoma Department of Human Services, Adult & Family Services
40. Oregon Health Authority, Department of Human Resources
41. Pennsylvania Department of Human Services
42. Rhode Island Department of Human Services
43. South Carolina Department of Social Services
44. South Dakota Department of Social Services
45. Tennessee Department of Human Services
46. Texas Health and Human Services Commission
47. Utah Department of Workforce Services
48. Vermont Department of Children and Families, Economic Services Division
49. Virginia Department of Social Services
50. Washington Department of Social & Health Services
51. Wisconsin Department of Children & Families
52. Wyoming Department of Family Services

Authority for Conducting the Matching Program: In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the IRS files to any federal, state, or local agency administering a program listed below:

- (i) A state program funded under part A of title IV of the Social Security Act;
- (ii) Medical assistance provided under a state plan approved under title XIX of the Social Security Act, or subsidies provided under section 1860D-14 of such Act;
- (iii) Supplemental security income benefits provided under title XVI of the Social Security Act, and federally

administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93-66);

- (iv) Any benefits provided under a state plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);
- (v) Unemployment compensation provided under a state law described in section 3304 of the IRC;
- (vi) Assistance provided under the Food and Nutrition Act of 2008;
- (vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93-66);
- (viii)(I) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;
- (viii)(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;
- (viii)(III) Health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title.

Purpose: The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interests of the subjects of the match. Information is disclosed by the IRS only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Categories of Individuals: Individuals applying for or receiving benefits under federal and state administered programs.

Categories of Records: The source Agency will furnish the IRS with records in accordance with the current IRS Publication 3373, DIFSLA Handbook. The Agency may request return information on a monthly basis for new applicants. The Agency may request information with respect to all beneficiaries once per year. The requests from the Agency will include: The Social Security Number (SSN) and name control (first four characters of the surname) for each individual for whom unearned income information is requested. IRS will provide a response record for each individual identified by the Agency. The total number of records will be equal to or greater than the number of records submitted by the Agency. In some instances, an individual may have more than one

record on file. When there is a match of individual SSN and name control, IRS will disclose the following to the Agency: Payee account number; payee name and mailing address; payee taxpayer identification number (TIN); payer name and address; payer TIN; and income type and amount.

System(s) of Records: Public Law 98-369, Deficit Reduction Act of 1984, requires the Agency administering certain federally assisted benefit programs to conduct income verification to ensure proper distribution of benefit payments. The records in this match are to be disclosed only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of benefits under, these programs.

IRS will extract return information with respect to unearned income from the Information Returns Master File (IRMF), Treas/IRS 22.061, as published at 80 FR 54081-082 (September 8, 2015), through the DIFSLA Computer Matching Program.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2020-22389 Filed 10-8-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Federal Insurance Office Study on the Insurance Capital Standard

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Request for information.

SUMMARY: The Federal Insurance Office (FIO) of the U.S. Department of the Treasury (Treasury) is issuing this notice (Notice) to solicit input on a future study by FIO (FIO Study) to evaluate the potential effects of the insurance capital standard (ICS) on U.S. insurance markets, U.S. consumers, and U.S. insurers. FIO coordinates federal efforts and develops federal policy on prudential aspects of international insurance matters, including representing the United States at the International Association of Insurance Supervisors (IAIS). Version 2.0 of the ICS was adopted by the IAIS in November 2019, with a five-year monitoring period starting in 2020 for confidential reporting and discussion in supervisory colleges.¹ FIO will consider the responses to this Notice to inform its work on the ICS and related matters,

¹ For additional information on Treasury's efforts in the development of the ICS, refer to FIO's Annual Reports, <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/reports-notices>.

including future revisions to the ICS and the economic impact assessment of the ICS to be conducted by the IAIS in 2023.²

DATES: Submit written comments on or before January 15, 2021.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>, in accordance with the instructions on that site, or by mail to the Federal Insurance Office, Attn: Krishna Kundu, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments should be captioned "FIO ICS Study." In general, Treasury will post all comments to www.regulations.gov without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: From the Federal Insurance Office: Steven Seitz, Director, 202-622-5042, Steven.Seitz@Treasury.gov; Krishna Kundu, Senior Insurance Regulatory Policy Analyst, 202-417-5221, Krishna.Kundu@Treasury.gov; or Andrew Shaw, Senior Policy Advisor, (202) 304-4532, Andrew.Shaw2@Treasury.gov. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

FIO's Engagement at the IAIS

FIO was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which authorizes FIO to coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters, including representing the United States at the IAIS.³ As part of FIO's commitment to transparency in its work at the IAIS, FIO

is issuing this Notice to provide the public with the opportunity to provide input to help inform FIO's future work on the ICS and related matters at the IAIS. Throughout its work at the IAIS, FIO will continue to work collaboratively with the other members of Team USA—the Federal Reserve Board (Federal Reserve), the National Association of Insurance Commissioners (NAIC), and the U.S. states.

Both Congress and FIO's Federal Advisory Committee on Insurance (FACI) have highlighted the need for further analysis and study of the ICS by FIO during the ICS monitoring period from 2020 to 2024. The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 requires that, before supporting or consenting to the adoption of any final international insurance capital standard, the Secretary of the Treasury, the Chairman of the Federal Reserve, and the Director of the Federal Insurance Office, in consultation with the National Association of Insurance Commissioners, complete a study and submit a report to Congress on the impact of any such standard on consumers and U.S. markets.⁴ Additionally, in December 2019, FACI provided recommendations on FIO's future work on the ICS, including that FIO: (1) Help drive forward the work needed to ensure timely execution on the milestones laid out during the November 2019 IAIS meetings, and (2) continue its successful engagement model with stakeholders.⁵

FIO Study of the ICS

This Notice seeks input on how FIO should evaluate the potential effects of the ICS on the insurance market in the United States, including consumers and insurers.⁶ The Notice also seeks input on how U.S. insurers operating overseas may be affected by the potential implementation of the ICS in other jurisdictions. Comments in response to this Notice will help inform FIO's work on the ICS during the monitoring period and FIO's views regarding the future structure and content of the ICS economic impact assessment that the IAIS intends to conduct in 2023. FIO aims to complete its study prior to the IAIS' issuance of a public consultation

⁴ Economic Growth, Regulatory Relief, and Consumer Protection Act, § 211(c)(3)(A).

⁵ Federal Advisory Committee on Insurance, https://home.treasury.gov/system/files/311/December2019FACI_InternationalProposedRecs_0.pdf.

⁶ International standards adopted by the IAIS are not binding or operational in the United States unless implemented through the relevant state or federal legislative or administrative processes, as appropriate.

on the ICS as a prescribed capital requirement (PCR) and completion of its economic impact assessment in 2023.

The ICS

Since 2013, the IAIS has been developing a global ICS in order to create a common language among supervisors for assessing the capital adequacy of insurance groups that have cross-border operations or internationally active insurance groups (IAIGs).⁷ The ultimate goal of the IAIS is the development of a single ICS that includes a common methodology through which one ICS achieves comparable (*i.e.*, substantially the same) outcomes across jurisdictions. The ICS is based on a total balance sheet approach, defined by the IAIS as a concept that recognizes the interdependence of assets, liabilities, regulatory capital requirements, and capital resources. The total balance sheet approach is intended to ensure that the impacts of all relevant material risks on an IAIG's overall financial position are appropriately and adequately recognized.⁸

During the monitoring period, the IAIS has asked group-wide supervisors to encourage annual confidential reporting of a reference ICS that consists of three components: (1) A market-adjusted valuation methodology (MAV) with a single discounting approach; (2) a standard method for calculating the capital requirement; and (3) converged criteria for qualifying capital resources. Additional reporting of the ICS based on an alternative valuation methodology, Generally Accepted Accounting Principles with Adjustments (GAAP Plus), and other methods to calculate the ICS capital requirement would be permitted at the option of the group-wide supervisor during the monitoring period. Optional reporting could also include the submission of results based on the Aggregation Method (AM), which will be under review for comparability

⁷ An IAIG is defined to be an insurer that meets the following two criteria: (1) Internationally Active (*i.e.*, premiums are written in three or more international jurisdictions; and gross written premiums outside of the home jurisdiction are at least 10 percent of the group's total gross written premiums), and (2) Size (based on a three-year rolling average), where total assets are at least USD 50 billion or gross written premiums are at least USD 10 billion. IAIS, Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups, Updated November 2019, <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles-and-comframe//file/91154/iais-icps-and-comframe-adopted-in-november-2019>.

⁸ IAIS, Risk-Based Global Insurance Capital Standard Version 2.0 Public Consultation, July 31, 2018, <https://www.iaisweb.org/page/supervisory-material/insurance-capital-standard//file/76133/ics-version-20-public-consultation-document>.

² IAIS, 14 November 2019: Work Plan and Timeline 2020–24, <https://www.iaisweb.org/page/news/press-releases//file/87171/work-plan-and-timeline-2020-24>.

³ 31 U.S.C. 313(c)(1)(E).

to the ICS during the monitoring period.⁹

Over the last few years, the United States has been leading the development of the AM, which leverages the NAIC's group capital calculation (GCC) work and the Federal Reserve's Building Block Approach (BBA). Building on existing state-based insurance standards, the GCC and BBA are each entity-based approaches that take the capital resources and capital requirements for each entity within an insurance group and aggregate them into a group capital calculation. By using the GCC and BBA as the bases for its development, the AM is currently structured to be more reflective of the insurance regulatory framework and business practices in the United States.

In November 2019, the IAIS adopted version 2.0 of the ICS, which eliminated the options that were analyzed under version 1.0. The IAIS has agreed to implement the ICS in two phases—a five-year monitoring period from 2020 through 2024 during which the ICS will continue to be refined, followed by a second phase when the ICS will be implemented as a PCR in 2025.¹⁰ Further, the IAIS stated in November 2019 that it aims to be in a position by the end of the monitoring period to assess whether the AM provides comparable—*i.e.*, substantially the same (in the sense of the ultimate goal)—outcomes to the ICS. If so, the AM will be considered an outcome-equivalent approach for implementation of the ICS as a PCR.¹¹ Additionally, during the latter half of 2023, the IAIS plans to issue a public consultation on the ICS and initiate an economic impact assessment, with the aim of addressing the results of those undertakings in the final version of the ICS to be implemented as a PCR.¹²

II. Request for Comments

FIO is interested in responses to the following questions. Commenters may also provide information on other issues or topics that are relevant to FIO's work on the ICS, the FIO Study, and related IAIS matters.

1. If the ICS were adopted in the United States, how would this affect the insurance market in the United States,

including consumers and insurers? How would the adoption of the ICS affect the competitiveness of U.S.-domiciled IAIGs, foreign insurance groups with significant operations in the United States, and U.S. insurers that have current or planned operations abroad?

2. Please provide information on whether the ICS could create regulatory capital arbitrage opportunities or have procyclical effects, leading to increased volatility in U.S. insurance markets.

3. How should the FIO Study consider the potential effects of implementing the AM in U.S. insurance markets as compared to implementing the ICS? In addition, should the FIO Study consider the potential impact upon U.S. insurance markets if credit rating agencies were to accept the ICS as a global standard?

4. What information should be considered in evaluating the impact of ICS implementation on the various business lines and the cost and availability of different product types in the U.S. insurance market?

5. If the ICS were implemented in foreign jurisdictions where U.S. insurers operate, what effects could the ICS have on the ability of U.S. insurers to compete with local insurers and other international insurers in these overseas markets? How should FIO evaluate issues related to global competitiveness of U.S. insurers and potential adoption of the ICS by foreign jurisdictions?

6. Please provide your views on the following issues, as relevant to the FIO Study.

a. *Data for FIO Study:* The ICS has been developed with data provided by volunteer insurance groups. To what extent should FIO use data provided to FIO by individual insurers to conduct the FIO Study? In addition to data from specific insurers, are there any other relevant data sources that should be used to evaluate the ICS? If so, what other sources of quantitative and qualitative data would be available, including any data that could be representative of U.S. insurance practices and product types.

b. *Market Effects from MAV:* The reference ICS is based on a market-adjusted valuation methodology. What information should be considered in assessing MAV versus other valuation approaches and their potential effects on the insurance market in the United States, including consumers and insurers?

In particular, how should the FIO Study consider how MAV affects the following areas?

i. Changes to U.S. insurer investment behavior and ability to match asset-liability cash flows;

ii. Implications for product offerings and shifts in product mix for both life insurers and property & casualty insurers; and

iii. Potential effects on insurers' role as a significant source of long-term investment and liquidity in the economy.

c. *Capital Requirement:* The ICS capital requirement is based on a standardized framework, whereby the calculation of ICS required capital, including the risks and stresses, is defined. How should the FIO Study consider the following?

i. The extent to which jurisdiction-specific risks should be taken into account; and

ii. The use of internal ratings for assessing credit risk exposures.

d. *Available Capital:* The reference ICS measures available capital according to IAIS-established criteria and composition limits. The IAIS is also considering transitional arrangements during the monitoring period in order to ensure a smooth transition of the ICS as a PCR. How should the FIO Study consider the following?

i. Application of transitional arrangements during the monitoring period; and

ii. Implications for the fungibility of capital¹³ under the ICS.

e. *Jurisdictional Flexibility:* The reference ICS recognizes a limited number of areas for national discretion, such as senior debt as qualifying capital. Should the FIO Study evaluate any further application of jurisdictional flexibility for ICS implementation?

7. Please provide any views regarding the following additional issues, as they relate to the FIO Study.

a. What data and input from market participants should be taken into consideration?

b. Describe any data or data services that independent third parties could provide for purposes of the FIO Study.

c. For the purposes of the FIO Study, would a "point in time" analysis be appropriate or would another time frame be more relevant for determining the implications?¹⁴

¹³ Fungibility of capital refers to the availability of capital resources in the balance sheet of a single company in a group to fully absorb any amount of losses within that group (*i.e.*, the ability to absorb losses arising anywhere within the IAIG).

¹⁴ Point in time analysis refers to taking a snapshot of the ICS at a particular point in time during the monitoring period and conducting a study based on the ICS framework at that time. The IAIS has stated that it expects the monitoring period to be a period of stability. As noted above, FIO aims to complete the impact study for input to the IAIS before issuance of the public consultation of the ICS as a PCR and the economic impact assessment in 2023.

⁹ *Id.*

¹⁰ IAIS, Explanatory Note on the Insurance Capital Standard (ICS) and Comparability Assessment, November 14, 2019, <https://www.iaisweb.org/page/news/press-releases//file/87173/explanatory-note-on-the-ics-and-comparability-assessment>.

¹¹ *Id.*

¹² IAIS, 14 November 2019: Work Plan and Timeline 2020–24, <https://www.iaisweb.org/page/news/press-releases//file/87171/work-plan-and-timeline-2020-24>.

8. How should the FIO Study inform FIO's engagement on the IACS economic impact assessment of the ICS?

9. How has the COVID-19 pandemic informed your views on the issues discussed in this Notice?

10. Please provide any other comments on the issues discussed in this Notice.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2020-22384 Filed 10-8-20; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0059]

Agency Information Collection

Activity: Statement of Person Claiming To Have Stood In Relation of Parent

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), 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 reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 8, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to

Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0059" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421-1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1310, 1315.

Title: Statement of Person Claiming to Have Stood in Relation of Parent (VA Form 21P-524).

OMB Control Number: 2900-0059.

Type of Review: Reinstatement of a previously approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries.

Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. 38 U.S.C 1315 established Dependency Indemnity Compensation to Parents (known as Parents' DIC). Parent's DIC is a monthly benefit payable to the parent(s) of a deceased Veteran. The payable monthly benefit is dependent on the parent's (parents') annual income. Additional funds are payable to the parent(s) if they are in a patient in a nursing home, blind, so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

38 CFR 3.59 defines the term parent as ". . . a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a Veteran at any time before his or her entry into active service."

The information collected will be used by VBA to evaluate a claimant's parental relationship to a deceased Veteran when the claimant is not the Veteran's natural mother or father or adopted mother or father.

Affected Public: Individuals and households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 2 hours (120 Minutes).

Frequency of Response: Once.

Estimated Number of Respondents: 400.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Performance, and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020-22380 Filed 10-8-20; 8:45 am]

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17 CFR Parts 230 and 240

Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status and Accredited Investor Definition; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–10823]

Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Commission is issuing an order designating the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), and the Investment Adviser Representative license (Series 65) as qualifying natural persons for accredited investor status.

DATES: This Order is effective December 8, 2020.

FOR FURTHER INFORMATION CONTACT: Charlie Guidry, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Order designating certain professional licenses as qualifying natural persons for accredited investor status pursuant to Rule 501(a)(10) under the Securities Act of 1933 (“Securities Act”).

After consideration of public comments and for the reasons set forth in the adopting release for Rule 501(a)(10),¹ the Commission hereby finds that the following professional licenses meet the attributes to qualify natural persons holding such licenses in good standing as accredited investors under Rule 501(a)(10): General Securities Representative license (Series 7),² Private Securities Offerings Representative license (Series 82),³ and Investment Adviser Representative

¹ See Amending the “Accredited Investor” Definition, Release Nos. 33–10824; 34–89669 (Aug. 26, 2020).

² The Financial Industry Regulatory Authority, Inc. (“FINRA”) developed and administers the Series 7 examination. An individual must be associated with a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam and be granted a license. See <https://www.finra.org/registration-exams-ce/qualification-exams/series7>.

³ FINRA developed and administers the Series 82 examination. An individual must be associated with and sponsored by a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam. See <https://www.finra.org/registration-exams-ce/qualification-exams/series82>.

license (Series 65).⁴ Our determination that these three licenses meet the attributes specified in Rule 501(a)(10) may be subject to reconsideration should any significant modifications occur to the applicable licensing requirements.

Accordingly, pursuant to Rule 501(a)(10) of Regulation D under the Securities Act, it is hereby ordered that the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), or the Investment Adviser Representative license (Series 65) shall qualify natural persons holding such licenses in good standing as accredited investors under Rule 501(a)(10).

By the Commission.

Dated: August 26, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020–19188 Filed 10–8–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230 and 240

[Release Nos. 33–10824; 34–89669; File No. S7–25–19]

RIN 3235–AM19

Accredited Investor Definition

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the definition of “accredited investor” in our rules to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition. The amendments are intended to update and improve the definition to identify more effectively investors that have sufficient knowledge and expertise to participate in investment opportunities that do not have the rigorous disclosure and procedural requirements, and related investor protections, provided by registration under the Securities Act of 1933. We are also adopting amendments to the “qualified institutional buyer” definition in Rule 144A under the Securities Act to expand the list of entities that are

⁴ The North American Securities Administrators Association developed the Series 65 examination, and FINRA administers it. An individual does not need to be sponsored by a FINRA member firm to take the exam. Successful completion of the exam does not convey the right to transact business prior to being granted a license or registration by a state. See <https://www.nasaa.org/exams/study-guides/series-65-study-guide>.

eligible to qualify as qualified institutional buyers.

DATES: This final rule is effective December 8, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Zepralka, Office Chief, or Charlie Guidry, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance; Jennifer Songer, Branch Chief, or Lawrence Pace, Senior Counsel, at (202) 551–6999, Investment Adviser Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 230.144A (“Rule 144A”), 17 CFR 230.163B (“Rule 163B”), 17 CFR 230.215 (“Rule 215”), and 17 CFR 230.501 (“Rule 501”) of 17 CFR 230.500 through 230.508 (“Regulation D”) under the Securities Act of 1933 (“Securities Act”);¹ and 17 CFR 240.15g–1 (“Rule 15g–1”) under the Securities Exchange Act of 1934 (“Exchange Act”).²

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¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 78a *et seq.*

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I. Introduction and Background

On December 18, 2019, the Commission proposed amendments to the definition of “accredited investor” in Securities Act Rules 215 and 501(a) and to the definition of “qualified institutional buyer” in Rule 144A.³ The proposed amendments were intended to update and improve the definitions to identify more effectively institutional and individual investors that have sufficient knowledge and expertise to participate in investment opportunities that do not have the rigorous disclosure and procedural requirements, and related investor protections, provided by registration under the Securities Act.

The Proposing Release and the amendments we are adopting are part of a broader effort to simplify, harmonize, and improve the exempt offering framework under the Securities Act to promote capital formation and expand investment opportunities while maintaining and enhancing appropriate investor protections.⁴ As we noted in the Proposing Release, these amendments will provide a foundation for our ongoing efforts to assess whether the exempt offering framework, in its component parts and as a whole, is consistent, accessible, and effective for both issuers and investors. The Securities Act contains a number of

exemptions from its registration requirements and authorizes the Commission to adopt additional exemptions. As the Commission has previously noted, the regulatory framework for exempt offerings has evolved, and the significance of the exempt securities markets has increased both in terms of the absolute amount raised and relative to the public registered markets.⁵ In 2019, registered offerings accounted for \$1.2 trillion (30.8 percent) of new capital, compared to approximately \$2.7 trillion (69.2 percent) that we estimate was raised through exempt offerings.⁶ Of this, the estimated amount of capital reported as being raised in offerings under Rule 506(b) and 506(c) of Regulation D was approximately \$1.56 trillion.

The accredited investor definition is a central component of the Rule 506 exemptions from registration and plays an important role in other exemptions and other federal and state securities law contexts. Qualifying as an accredited investor, as an individual or an institution, is significant because accredited investors may, under Commission rules, participate in investment opportunities that are generally not available to non-accredited investors, including certain investments in private companies and offerings by certain hedge funds, private equity funds, and venture capital funds. The final rules are tailored to permit investors with reliable alternative indicators of financial sophistication to participate in such investment opportunities, while maintaining the safeguards necessary for investor protection and public confidence in investing in areas of the economy that disproportionately create new jobs, foster innovation, and provide for growth opportunities.

Historically, the Commission has stated that the accredited investor definition is “intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act’s registration process unnecessary.”⁷ Prior to the adoption of

these final rules, in the case of individuals, the accredited investor definition has used wealth—in the form of a certain level of income or net worth—as a proxy for financial sophistication. However, as stated in the Proposing Release, we do not believe wealth should be the sole means of establishing financial sophistication of an individual for purposes of the accredited investor definition. Rather, the characteristics of an investor contemplated by the definition can be demonstrated in a variety of ways. These include the ability to assess an investment opportunity—which includes the ability to analyze the risks and rewards, the capacity to allocate investments in such a way as to mitigate or avoid risks of unsustainable loss, or the ability to gain access to information about an issuer or about an investment opportunity—or the ability to bear the risk of a loss.⁸ Accordingly, the final rules create new categories of individuals and entities that qualify as accredited investors irrespective of their wealth, on the basis that such investors have demonstrated the requisite ability to assess an investment opportunity.

The amendments we are adopting are the product of years of efforts by the Commission and its staff to consider and analyze possible approaches to revising the accredited investor definition. A number of the amendments are consistent with those recommended by the Commission staff

needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction ‘not involving any public offering’”).

⁸ The accredited investor standard is similar to, but distinct from, other regulatory standards in Commission rules that are used to identify persons who are not in need of certain investor protection features of the federal securities laws. For example, Section 3(c)(7) of the Investment Company Act exempts from the definition of investment company any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of securities. Congress defined qualified purchasers as: (i) Natural persons who own not less than \$5 million in investments; (ii) family-owned companies that own not less than \$5 million in investments; (iii) certain trusts; and (iv) persons, acting for their own accounts or the accounts of other qualified purchasers, who in the aggregate own and invest on a discretionary basis, not less than \$25 million in investments (e.g., institutional investors). Each of these regulatory standards serves a different regulatory purpose. Accordingly, an accredited investor will not necessarily meet these other standards and these other regulatory standards are not designed to capture the same investor characteristics as the accredited investor standard. See also Report on the Review of the Definition of “Accredited Investor” (Dec. 18, 2015) (“2015 Staff Report”), available at <https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf>.

³ Amending the “Accredited Investor” Definition, Release Nos. 33–10734; 34–87784 (Dec. 18, 2019) [85 FR 2574 (Jan. 15, 2020)] (“Proposing Release”).

⁴ See Concept Release on Harmonization of Securities Offering Exemptions, Release No. 33–10649 (June 18, 2019) [84 FR 30460 (June 26, 2019)] (“Concept Release”) and Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33–10763; 34–88321 (Mar. 4, 2020) [85 FR 17956 (Mar. 31, 2020)] (“Access to Capital Proposing Release”).

⁵ See Concept Release at 30465. See also Access to Capital Proposing Release at 17957.

⁶ Unless otherwise indicated, information in this release on offering amounts is based on analyses by staff in the Commission’s Division of Economic Risk and Analysis (“DERA”) of data collected from SEC filings.

⁷ See Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015 (Jan. 30, 1987)]. See also *SEC v. Ralston Purina Co.*, 346 U.S. 119, 125 (1953) (taking the position that the availability of the Section 4(a)(2) exemption “should turn on whether the particular class of persons affected

in a 2015 report on the accredited investor definition,⁹ while some of the amendments are substantially similar to those the Commission proposed in 2007.¹⁰ Many of the amendments have been recommended, in one form or another, by the Small Business Capital Formation Advisory Committee, the former Advisory Committee on Small and Emerging Companies, the Investor Advisory Committee, and a wide array of public commenters.

The definition of “qualified institutional buyer” in Rule 144A is similarly intended to “identify a class of investors that can be conclusively assumed to be sophisticated and in little need of the protection afforded by the Securities Act’s registration provisions.”¹¹ With the exception of registered dealers, a qualified institutional buyer must in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with such a qualified institutional buyer.¹² The final rules expand the list of entities eligible for qualified institutional buyer status to be consistent with the amendments to the accredited investor definition, maintaining the \$100 million threshold for these entities to qualify for qualified institutional buyer status. In this way, the final rules avoid inconsistencies between the entity types eligible for each status while continuing to ensure that these entities have sufficient financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act.

We received more than 200 unique comment letters on the Proposing

Release.¹³ Many commenters supported expanding the accredited investor definition,¹⁴ while some commenters did not.¹⁵ Other commenters recommended eliminating the definition altogether so that anyone could invest in exempt offerings.¹⁶ We also received

¹³ Unless otherwise indicated, comments cited in this release are to comment letters received in response to the Proposing Release, which are available at <https://www.sec.gov/comments/s7-25-19/s72519.htm>.

¹⁴ See, e.g., letters from Matt Langford dated Dec. 18, 2019 (“M. Langford”); Ben Peterman dated Dec. 18, 2019 (“B. Peterman Letter”); SAF Financial Securities LLC dated Dec. 18, 2019 (“SAF Financial Letter”); Calfee, Halter & Griswold LLP dated Jan. 15, 2020 (“Calfee, Halter & Griswold Letter”); Blake Delaplane dated Jan. 13, 2020 (“B. Delaplane Letter”); Nexus Private Capital dated Jan. 9, 2020 (“Nexus Private Capital Letter”); Private Investor Coalition dated Mar. 9, 2020 (“PIC Letter”); Securities Intermediary and Financial Markets Association dated Mar. 11, 2020 (“SIFMA Letter”); Morningstar dated Mar. 16, 2020 (“Morningstar Letter”); Investment Company Institute dated Mar. 12, 2020 (“ICI Letter”); Native American Finance Officers Association dated Mar. 16, 2020 (“NAFOA Letter”); ALTI LLC dated Mar. 13, 2020 (“ALTI Letter”); Committee on Securities Laws of the Business Law Section of the Maryland State Bar Association dated Mar. 16, 2020 (“Md St. Bar Assn. Comm. on Sec. Laws Letter”); Center for Capital Markets Competitiveness dated Mar. 16, 2020 (“CCMC Letter”); Teachers Insurance and Annuity Association of America dated Mar. 16, 2020 (“TIAA Letter”); Rep. J. French Hill, Sen. Thom Tillis, Sen. Pat Toomey, Rep. David Schweikert, Rep. Bryan Steil, Rep. Anthony Gonzalez, and Rep. Warren Davidson dated Mar. 16, 2020 (“Rep. J. French Hill et al. Letter”); Investment Adviser Association dated Mar. 18, 2020 (“IAA Letter”); Small Business Investor Alliance dated Mar. 16, 2020 (“SBIA Letter”); North American Securities Administrators Association, Inc. dated Mar. 16, 2020 (“NASAA Letter”) (NASAA does not support the proposals for natural persons but does generally support the proposals for entities); eShares, Inc. (d/b/a Carta) dated Mar. 16, 2020 (“Carta Letter”); OpenDeal, Inc. (d/b/a Republic) dated Mar. 16, 2020 (“Republic Letter”) (preferring a “principles-based approach to assessing certain factors of an individual’s sophistication and ability to tolerate risk”); and Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association dated May 22, 2020 (“ABA FR of Sec. Comm. Letter”).

¹⁵ See, e.g., letters from Mike L. dated Dec. 19, 2020 (“M. L. Letter”); Consumer Federation of America dated Mar. 9, 2020 (“CFA Letter”); Healthy Markets Association dated Mar. 16, 2020 (“Healthy Markets Letter”); Securities Arbitration Clinic at St. John’s University School of Law dated Mar. 16, 2020 (“St. John’s Sec. Arbitration Clinic Letter”); Better Markets dated Mar. 16, 2020 (“Better Markets”); Xavier Becerra, Attorney General of the State of California et al. dated Mar. 16, 2020 (“CA Attorney General et al.”); Public Investors Arbitration Bar Association dated Mar. 16, 2020 (“PIABA Letter”); and Matthew J. Trudeau dated Mar. 13, 2020 (“M. Trudeau Letter”).

¹⁶ See, e.g., letters from Ryan Carpel dated Dec. 18, 2019 (“R. Carpel Letter”); Joseph Peter dated Dec. 20, 2019 (“J. Peter Letter”) (elimination of accredited investor/non-accredited investor distinction in Reg D offerings); Amrik Mann dated Dec. 20, 2019 (“A. Mann Letter”); Guenadi Jilevski dated Dec. 21, 2019 (“G. Jilevski Letter”); Samuel dated Dec. 23, 2019 (“S. Letter”); Conduit Investment Advisers, LLC dated Dec. 30, 2019 (“Conduit Letter”); Stuart Kuzik dated Apr. 24, 2020 (“S. Kuzik” Letter) (elimination of the

comments from several commenters in general support of expanding the definition of qualified institutional buyer in Rule 144A.¹⁷ In addition, in response to the Concept Release, the SEC’s Small Business Capital Formation Advisory Committee adopted a recommendation regarding changes to the accredited investor definition,¹⁸ and the 2019 SEC Government-Business Forum on Small Business Capital Formation (“SEC Small Business Forum”) provided a recommendation on the accredited investor definition.¹⁹ Prior to the Concept Release, the SEC’s Investor Advisory Committee adopted a recommendation regarding changes to the accredited investor definition.²⁰

definition); Bhavin Shah dated June 30, 2020 (“B. Shah Letter”); Kelly Wilson dated July 19, 2020 (“K. Wilson Letter”) (replacement of the definition with an acknowledgement-of-risk form); and Gary Freedman dated July 19, 2020 (“G. Freedman Letter”); and working paper *Abandon the Concept of Accredited Investors in Private Securities Offerings* submitted as comment letter from Andrew Vollmer, Mercatus Center at George Mason University, Aug. 21, 2020.

¹⁷ See, e.g., Better Markets Letter; ICI Letter; and letter from Fidelity Investments dated Mar. 16, 2020 (“Fidelity Letter”).

¹⁸ See U.S. Sec. and Exch. Comm’n Small Bus. Capital Formation Advisory Comm., *Recommendation* (Dec. 11, 2019) (“SBCFAC Recommendations”), available at <https://www.sec.gov/spotlight/sbcfac/recommendation-accredited-investor.pdf>. The SBCFAC recommended that the Commission: (i) “[l]eave the current financial thresholds in place, subject to possibly adjusting such thresholds downwards for certain regions of the country;” (ii) “[g]oing forward, index the financial thresholds for inflation on periodic basis;” and (iii) “[r]evise the definition to allow individuals to qualify as accredited investors based on measures of sophistication. In doing so, the Commission should create bright line rules for qualifying as an accredited investor by sophistication, which could include professional credentials, work experience, education, and/or a sophistication test.”

¹⁹ See U.S. Sec. and Exch. Comm’n Gov’t-Bus. Forum on Small Bus. Capital Formation, *Report on the 38th Annual Government-Business Forum on Small Business Capital Formation* (Aug. 14, 2019) (“SEC Small Business Forum Report”), available at <https://www.sec.gov/files/small-business-forum-report-2019.pdf>. The SEC Small Business Forum Report recommended that the Commission: (i) “[f]or natural persons, in addition to the income and net worth thresholds in the definition, add a sophistication test as an additional way to qualify;” (ii) “[p]rovide tribal governments parity with state governments;” and (iii) “[r]evise the dollar amounts to scale for geography, lowering the thresholds in states/regions with a lower cost of living.”

²⁰ See Recommendation of the Investor Advisory Committee: Accredited Investor Definition (Oct. 9, 2014) (“IAC Recommendations”), available at <http://www.sec.gov/spotlight/investor-advisorycommittee-2012/accredited-investor-definitionrecommendation.pdf>. The IAC recommended that the Commission (i) “evaluate whether the accredited investor definition, as it pertains to natural persons, is effective in identifying a class of individuals who do not need the protections afforded by the [Securities] Act;” (ii) “revise the definition to enable individuals to qualify as accredited investors based on their financial sophistication;” (iii) “consider alternative

⁹ See 2015 Staff Report.

¹⁰ Revisions of Limited Offering Exemptions in Regulation D, Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116 (Aug. 10, 2007)] (“2007 Proposing Release”).

¹¹ See Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Release No. 33–6806 (Oct. 25, 1988) [53 FR 44016 (Nov. 1, 1988)]. Rule 144A provides a non-exclusive safe harbor exemption from the registration requirements of the Securities Act for resales to qualified institutional buyers of certain restricted securities. Any person other than the issuer or a dealer who offers or sells securities in compliance with Rule 144A is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities within the meaning of Section 2(a)(11) of the Securities Act, such that the Section 4(a)(1) exemption is available for the resales of the securities.

¹² Rule 144A(a)(1)(i). A registered dealer is a qualified institutional buyer if it owns and invests in the aggregate at least \$10 million of securities of non-affiliated issuers on a discretionary basis or if it is acting in a riskless principal transaction on behalf of a qualified institutional buyer. Rules 144A(a)(1)(ii) and (iii).

After considering the public comments received and these recommendations, we are adopting the amendments substantially as proposed but with certain modifications in response to commenters' feedback. Commenters' views on different aspects of the proposal, as well as its effects, are discussed topically below.

II. Final Amendments to the Accredited Investor Definitions

A. Proposed Amendments

In the Proposing Release, the Commission proposed to amend the accredited investor definition to add categories of both natural persons and entities. For natural persons, the Commission proposed to add new categories to the definition that would permit natural persons to qualify as accredited investors based on certain professional certifications or designations or other credentials or, with respect to investments in a private fund, based on the person's status as a "knowledgeable employee" of the fund. Specifically, the Commission proposed to add the following natural persons:

- Natural persons holding in good standing one or more professional certifications or designations or other credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status; and
- natural persons who are "knowledgeable employees," as defined in Rule 3c-5(a)(4) under the Investment Company Act of 1940 (the "Investment Company Act"), of the private-fund issuer of the securities being offered or sold.²¹

For entities, the Commission proposed to add:

- SEC- and state-registered investment advisers and rural business investment companies to the list of entities specified in Rule 501(a)(1);
- limited liability companies to the list of entities specified in Rule 501(a)(3);

approaches to setting such thresholds—in particular limiting investments in private offerings to a percentage of assets or income—which could better protect investors without unnecessarily shrinking the pool of accredited investors; and (iv) "take concrete steps [to] encourage development of an alternative means of verifying accredited investor status that shifts the burden away from issuers who may, in some cases, be poorly equipped to conduct that verification, particularly if the accredited investor definition is made more complex."

²¹ A private fund is an issuer that would be an investment company, as defined in Section 3 of the Investment Company Act, but for Sections 3(c)(1) or 3(c)(7) of that Act. See Section 202(a)(29) of the Investment Advisers Act of 1940 (the "Advisers Act").

• entities, of a type not listed in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;

• "family offices," as defined in Rule 202(a)(11)(G)-1 under the Advisers Act: (i) With assets under management in excess of \$5,000,000, (ii) that are not formed for the specific purpose of acquiring the securities offered, and (iii) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

• "family clients," as defined in Rule 202(a)(11)(G)-1 under the Advisers Act, of a family office meeting the requirements in new Rule 501(a)(12).

In the Proposing Release, the Commission also proposed to amend the accredited investor definition to allow spousal equivalents to pool finances for the purpose of qualifying as accredited investors. Finally, the Commission proposed to codify several staff interpretations by adding notes to Rule 501 to clarify that:

- The calculation of "joint net worth" for purposes of Rule 501(a)(5) can be the aggregate net worth of an investor and the investor's spouse (or spousal equivalent if "spousal equivalent" is included in Rule 501(a)(5));²²
- the securities being purchased by an investor relying on the joint net worth test of Rule 501(a)(5) need not be purchased jointly; and
- when determining the accredited investor status of an entity under Rule 501(a)(8), one may look through various forms of equity ownership to natural persons.

B. Final Amendments

1. Natural Persons

a. Natural Persons Holding Professional Certifications and Designations or Other Credentials

In the Proposing Release, the Commission proposed to designate by order certain professional certifications and designations and other credentials from an accredited educational institution as qualifying for accredited investor status, with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential. The proposed amendment included the following non-exclusive list of attributes

²² Throughout this release, references to an investor's spouse include a spousal equivalent, as applicable, in light of the adoption of the amendments to Rule 501(a)(5) and Rule 501(a)(6).

that the Commission would consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status:

- The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;
- the examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;
- persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and
- an indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body.

The Commission indicated that it preliminarily expected that the initial Commission order accompanying the final rule would include the following certifications or designations administered by the Financial Industry Regulatory Authority, Inc. (FINRA): The Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65), and Licensed Private Securities Offerings Representative (Series 82).

i. Comments

Many commenters supported adding some form of professional certifications and designations or other credentials.²³

²³ See letter from Jeff LaBerge dated Jan. 17, 2020 ("J. LaBerge Letter"); letter from Alex Naegele dated Jan. 9, 2020 ("A. Naegele Letter"); letter from Kevin Gebert dated Mar. 4, 2020 ("K. Gebert Letter"); letter from Adam Moehn dated Mar. 8, 2020 ("A. Moehn Letter"); letter from Davis Treybig dated Dec. 20, 2019 ("D. Treybig Letter"); letter from Michael Seng dated Dec. 19, 2019 ("M. Seng Letter"); letter from Corey Wangler dated Feb. 26, 2020 ("C. Wangler Letter"); letter from Mercer Global Advisors, Inc. dated Mar. 11, 2020 ("Mercer Advisors Letter"); Morningstar Letter; ALTI Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; letter from National Association of Manufacturers dated Mar. 16, 2020 ("NAM Letter"); letter from Chartered Market Technicians Association dated Mar. 16, 2020 ("CMT Letter"); letter from High Level Working Group on Cryptocurrency and Digital Assets Self-Regulation dated Mar. 16, 2020 ("HLWG Letter"); SBIA Letter; Republic Letter; letter from Riley T. Maud dated Mar. 6, 2020 ("R. Maud Letter"); letter from Investments & Wealth Institute dated Mar. 13, 2020 ("IWI Letter"); letter from Managed Funds Association and Alternative Investment Management Association dated Mar. 13, 2020 ("MFA and AIMA Letter"); letter from Cornell

Some of these commenters noted that attaining credentials may signal a level of sophistication exceeding that of investors who currently qualify as accredited investors under the income or net worth thresholds.²⁴ In addition, a

Securities Law Clinic dated Mar. 13, 2020 (“Cornell Sec. Clinic Letter”); Fidelitty Letter; Carta Letter; CFA Letter; Rep. J. French Hill et al. Letter; letter from Tron Black dated Dec. 24, 2019 (“T. Black Letter”); letter from Seyed Arab dated Dec. 18, 2019 (“S. Arab Letter”); letter from Malcolm Douglas dated Dec. 18, 2019 (“M. Douglas Letter”); letter from James J. Angel dated Mar. 3, 2020 (“J. Angel Letter”); letter from Crowdwise, LLC dated Mar. 1, 2020 (“Crowdwise Letter”); letter from Geraci LLP dated Mar. 9, 2020 (“Geraci Letter”) and letter from American Association of Private Lenders submitted May 27, 2020 (“AAPL Letter”) (the Geraci Letter and the AAPL Letter are essentially identical); letter from Leonard A. Grover dated Dec. 21, 2019 (“L. Grover Letter”); letter from Ryan L. Doyal dated Dec. 23, 2019 (“R. Doyal Letter”); letter from Kathreek Pulavarthi dated Dec. 29, 2019 (“K. Pulavarthi Letter”); letter from G. Philip Rutledge dated Jan. 31, 2020 (“P. Rutledge Letter”); letter from Inportal dated Feb. 21, 2020 (“Inportal Letter”); CCMC Letter; letter from Institute for Portfolio Alternatives dated Mar. 16, 2020 (“IPA Letter”); letter from Karen Salay dated Dec. 19, 2019 (“K. Salay Letter”); letter from Gordon Hodge dated Dec. 21, 2019 (“G. Hodge Letter”); letter from Graham Gintz dated Mar. 6, 2020 (“G. Gintz Letter”); letter from CityVest dated Jan. 7, 2020 (“CityVest Letter”); letter from Bryan M. Crane dated Dec. 19, 2019 (“B. Crane Letter”); letter from National Introducing Brokers Association dated Mar. 3, 2020 (“NIBA Letter”); M. Langford Letter; letter from Timothy E. Messenger dated Dec. 19, 2019 (“T. Messenger Letter”); letter from Ruthlynn E. Black dated Dec. 30, 2019 (“R. Black Letter”) (the R. Doyal Letter and the R. Black Letter are essentially identical); letter from Chris Lakumb dated Dec. 18, 2019 (“C. Lakumb Letter”); letter from Ashley Wunderlich dated Feb. 7, 2020 (“A. Wunderlich Letter”); letter from Kurt Wunderlich dated Feb. 7, 2020 (“K. Wunderlich Letter”); letter from Kevin King dated Jan. 23, 2020 (“K. King Letter”); letter from Michael Bernstein dated Dec. 19, 2019 (“M. Bernstein Letter”); letter from Luke Denlinger dated Dec. 22, 2019 (“L. Denlinger Letter”); CFA Letter; B. Peterman Letter; letter from American Bankers Association dated Mar. 16, 2020 (“Am. Bankers Assn. Letter”); letter from Raymond Wu dated Feb. 21, 2020 (“R. Wu Letter”); letter from Joseph Caruso dated Jan. 28, 2020 (“J. Caruso Letter”); letter from Cody L. West dated Feb. 23, 2020 (“C. West Letter”); letter from American Investment Council dated Mar. 16, 2020 (“AIC Letter”); letter from Jared Smith dated Feb. 10, 2020 (“J. Smith Letter”); letter from Angel Capital Association dated Mar. 9, 2020 (“ACA Letter”); letter from Rudolph Langenbach dated Jan. 10, 2020 (“R. Langenbach Letter”); letter from Association of Trust Organizations, Inc. dated Apr. 15, 2020 (“ATO Letter”); letter from Brian Seelinger dated Dec. 18, 2019 (“B. Seelinger Letter”); letter from Artinvest dated Apr. 23, 2020 (“Artinvest Letter”); letter from David R. Burton dated May 1, 2020 (“D. Burton Letter”); letter from CFA Institute dated May 4, 2020 (“CFA Institute Letter”); ABA FR of Sec. Comm. Letter; letter from Biotechnology Innovation Organization dated June 16, 2020 (“BIO Letter”); and letter from Brandon Andrews et al. dated May 4, 2020 (“B. Andrews et al. Letter”).

²⁴ See Morningstar Letter (indicating that “[p]utting an emphasis on allowing investors with knowledge and expertise to participate in private capital markets is sensible. These investors, by definition, should be better able to cope with the opacity and limited availability of comparable measures in our private markets”); M. Seng Letter (positing that “someone who has professional

few commenters supported the proposal to add professional certifications or designations to the definition, but suggested that the Commission also require professional experience.²⁵ Another commenter opposed the proposal, raising a concern that individuals qualifying as accredited investors solely under such criteria would not have the financial capacity to be able to bear the financial risk of private investments.²⁶ Another commenter opposed the proposal and the existence of the accredited investor concept, arguing that “educational tests” are inherently discriminatory.²⁷

A number of commenters specifically responded on the use of FINRA-administered exams. Several commenters expressed support for inclusion of the Series 7,²⁸ Series 65,²⁹

certification(s) is far more qualified to determine if the investment is right for them or not far better than someone who doesn’t understand the investment but has money looking to invest”); and C. Wangler Letter (stating that “professional licensing is more indicative of investment knowledge than how much money one has”).

²⁵ See NASAA Letter (noting that a level of years of experience should be required); letter from Nasdaq, Inc. dated May 18, 2020 (“Nasdaq Letter”) (noting that “most professional designations or certifications alone [do not] suffice to establish the financial sophistication and independent judgment required to evaluate private investments that are inherently risky and illiquid. An examination of knowledge, without an additional requirement of industry experience, is not a satisfactory means to determine whether an investor can bear the risk of and evaluate a potential investment in an exempt offering without the benefit of a registration statement or similar disclosure”); and Geraci Letter and AAPL Letter (supporting inclusion of Series 7, 65, and 82 license holders without an experience requirement, but conditioning support for the inclusion of CPAs, JDs, CFAs, and CAIAs on having three years of experience, and noting that the experience requirement “protect[s] newly licensed individuals, who may not be familiar with the real world applications of their education, from partaking in inappropriate investment opportunities”).

²⁶ See St. John’s Sec. Arbitration Clinic Letter.

²⁷ See B. Shah Letter (stating that income and wealth requirements are also discriminatory).

²⁸ See T. Black Letter; S. Arab Letter; M. Douglas Letter; J. Angel Letter; Crowdwise Letter; L. Grover Letter; R. Doyal Letter and R. Black Letter; K. Pulavarthi Letter; P. Rutledge Letter; Inportal Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; NAM Letter; CCMC Letter; IPA Letter; HLWG Letter; SBIA Letter; R. Maud Letter (indicating that “professional certifications such as the [Series 7], [Series 65], and [Series 82] are exactly the types of certifications that indicate financial sophistication which in turn would satisfy the accredited investor definition”); Artinvest Letter; ABA FR of Sec. Comm. Letter; and Geraci Letter and AAPL Letter (noting that “those who hold a Series 7, 65, or 82 license should be permitted to qualify as accredited investors without any additional approval by the Commission as obtaining such a license enables them to evaluate investments on behalf of third parties, thus qualifying them to effectively evaluate investment opportunities on their own behalf as well”).

²⁹ See T. Black Letter; S. Arab Letter; M. Douglas Letter; J. Angel Letter; Crowdwise Letter; K. Salay Letter; G. Hodge Letter; L. Grover Letter; R. Doyal

and/or Series 82 exams.³⁰ One commenter noted that these exams test important investing concepts,³¹ while another stated that individuals qualified to advise others on whether to invest in private offerings should be able to invest themselves.³² One commenter opposed the inclusion of these exams,³³ while another stated that a person should be required to pass all three exams to be considered an accredited investor.³⁴

One commenter supported including all FINRA exams.³⁵ A number of commenters also specifically supported including the following examinations: Series 3 (National Commodities Futures Examination),³⁶ Series 6 (Investment Company and Variable Contracts Products Representative Examination),³⁷ Series 22 (Direct Participation Programs Limited Representative Examination),³⁸ Series 66 (Uniform Combined State Law Examination),³⁹ Series 79 (Investment Banking Representative Examination),⁴⁰ and Series 86 and 87 (Research Analyst

Letter and R. Black Letter; K. Pulavarthi Letter; P. Rutledge Letter; Inportal Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; NAM Letter; CCMC Letter; IPA Letter; HLWG Letter; SBIA Letter; R. Maud Letter; Artinvest Letter; ABA FR of Sec. Comm. Letter; and Geraci Letter and AAPL Letter.

³⁰ See M. Douglas Letter; Crowdwise Letter; L. Grover Letter; R. Doyal Letter and R. Black Letter; K. Pulavarthi Letter; P. Rutledge Letter; Inportal Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; NAM Letter; CCMC Letter; IPA Letter; HLWG Letter; SBIA Letter; R. Maud Letter; Artinvest Letter; ABA FR of Sec. Comm. Letter; and Geraci Letter and AAPL Letter.

³¹ See HLWG Letter (noting that the Series 7, 65, and 82 exams “are sufficiently rigorous, effectively assess the degree of knowledge and understanding of key investment subjects and concepts, and result in the development of competent and capable investment professionals. Thus, they render the protections of the Securities Act unnecessary”).

³² See J. Angel Letter (stating that “[i]t certainly makes sense that licensed people in the securities industry who are allowed to sell private offerings to their clients should also be allowed to invest in those same offerings as accredited investors”).

³³ See letter from Al Hemmingsen dated Dec. 29, 2019 (“A. Hemmingsen Letter”).

³⁴ See Cornell Sec. Clinic Letter (positing that “one of these examinations alone is [not] enough to test an individual’s financial sophistication. Instead, the SEC should require an investor to pass all three of these exams”).

³⁵ See P. Rutledge Letter (noting that “[i]f the SEC and relevant state securities regulators think [FINRA license holders] sufficiently qualified to render investment-related services to the public, those individuals should be able to purchase investments of their choice”).

³⁶ See P. Rutledge Letter; NIBA Letter; IPA Letter; Artinvest Letter; and ABA FR of Sec. Comm. Letter.

³⁷ See P. Rutledge Letter; IPA Letter; Artinvest Letter; and ABA FR of Sec. Comm. Letter.

³⁸ See P. Rutledge Letter and ABA FR of Sec. Comm. Letter.

³⁹ See P. Rutledge Letter; A. Naegle Letter; IPA Letter; Artinvest Letter; D. Burton Letter; and ABA FR of Sec. Comm. Letter.

⁴⁰ See P. Rutledge Letter and CCMC Letter.

Examination).⁴¹ A few commenters supported inclusion of the FINRA “Securities Industry Essentials” (SIE) examination,⁴² while a few other commenters opposed its inclusion.⁴³

Commenters also responded to the Proposing Release’s request for comment on what other professional certifications and designations or other credentials should be included in a Commission order designating qualifying credentials. We received a diverse range of comments relating to the inclusion of certain professional credentials, educational experience, and professional experience. With respect to professional credentials, several commenters expressed support for including certified public accountants (CPAs),⁴⁴ while a few commenters were opposed to their inclusion.⁴⁵ One commenter noted its support for including CPAs was based on the commenter’s view that the exam process is “rigorous” and requires “extensive” education and that the license is granted by the states.⁴⁶ Commenters who were

opposed expressed their view that the CPA credential is not focused on investing,⁴⁷ and does not reliably demonstrate an individual’s comprehension and sophistication in the areas of securities and investing.⁴⁸ Some commenters also supported including Chartered Financial Analyst (CFA),⁴⁹ Chartered Alternative Investment Analyst (CAIA),⁵⁰ Certified Financial Planner (CFP),⁵¹ Certified Trust and Financial Advisor (CTFA),⁵² and Certified Investment Management Analyst (CIMA) and Certified Private Wealth Advisor (CPWA) certifications.⁵³ One commenter expressed concern with such an approach, noting that “private designation conferring organizations are not subject to [C]ommission oversight.”⁵⁴

Commenters also responded on whether the Commission should include certain educational attributes. We received several comments in support of including law degrees,⁵⁵ and

examination process and require extensive education, they are also licensed by state regulatory bodies and are under more oversight than many other types of certifications”).

⁴⁷ See NASAA Letter.

⁴⁸ See CFA Letter.

⁴⁹ See C. Lakumb Letter; A. Wunderlich Letter; K. Wunderlich Letter; P. Rutledge Letter; K. King Letter; J. Angel Letter; A. Naegele Letter; CityVest Letter; A. Moehn Letter; Geraci Letter and AAPL Letter (these commenters would also require three years of experience and good standing); M. Bernstein Letter; L. Denlinger Letter; CFA Letter; IPA Letter; Mercer Advisors Letter; HLWG Letter; Fidelity Letter; Carta Letter; ATO Letter; B. Seelinger Letter; Artivist Letter; D. Burton Letter; and CFA Institute Letter (the CFA designation is awarded by the CFA Institute).

⁵⁰ See B. Peterman Letter; C. Lakumb Letter; A. Wunderlich Letter; K. Wunderlich Letter; CityVest Letter; Geraci Letter and AAPL Letter (these commenters would also require three years of experience and good standing); HLWG Letter; Fidelity Letter; Carta Letter; and Artivist Letter.

⁵¹ See C. Lakumb Letter; P. Rutledge Letter; J. Angel Letter; Mercer Advisors Letter; HWLG Letter; CFP Letter; Carta Letter; ATO Letter; and D. Burton Letter (positing that “[t]he CFA Charter and CFP certification generally require the mastery of a broader range of material at a deeper level than the series 7 exam and, therefore, better equip a person to evaluate investments”).

⁵² See Am. Bankers Assn. Letter (the CTFA designation is awarded by the Am. Bankers Assn.) and ATO Letter.

⁵³ See IWI Letter (the CIMA and CPWA designations are awarded by the Investments & Wealth Institute).

⁵⁴ See A. Hemmingsen Letter.

⁵⁵ See CityVest Letter; Geraci Letter and AAPL Letter (positing that “[t]hese individuals have received significant training on evaluating complex legal and financial concepts, and given experience practicing in their given fields, we believe they are more than capable of making complex investment decisions on their own behalf,” but also stating that the Commission should include a three year experience and licensing requirement); A. Naegele Letter; J. Caruso Letter (supporting inclusion of concentrations, legal certifications, and master of laws programs in securities law); C. West Letter; and AIC Letter.

a similar number of comments opposing their inclusion.⁵⁶ Two commenters supported the inclusion of lawyers with legal experience,⁵⁷ while another noted that some level of financial experience should be required.⁵⁸ Several commenters supported including a master’s degree in business administration from an accredited educational institution;⁵⁹ while others were opposed.⁶⁰ Similarly, several commenters supported including various graduate degrees,⁶¹ while a few commenters expressed opposition.⁶² Commenters also expressed support for including various other educational programs.⁶³ One commenter did not

⁵⁶ See P. Rutledge Letter; CFA Letter (noting that “[a]bsent some additional investment-specific experience or expertise, individuals with [a law degree] cannot reasonably be expected to have sufficient knowledge or experience to evaluate the merits and risks of a prospective investment absent the protections afforded in the public markets (access to comprehensive and reliable information about the offering)”; letter from Sarah H. Moller dated Mar. 13, 2020 (“S. Moller Letter”); Md St. Bar Assn. Comm. on Sec. Laws Letter (noting that “[e]ven a thorough understanding of the federal securities laws and how they operate in practice does not provide a person with such sophistication and knowledge when applied to evaluating ‘the merits and risks of a prospective investment’”); NASAA Letter; and Cornell Sec. Clinic Letter.

⁵⁷ See Geraci Letter and AAPL Letter.

⁵⁸ See A. Naegele Letter.

⁵⁹ See G. Gintz Letter; CityVest Letter; J. Angel Letter; B. Crane Letter; Artivist Letter; and Geraci Letter and AAPL Letter. The Geraci Letter and AAPL Letter would also require “verification of graduation from a nationally accredited university.”

⁶⁰ See S. Arab Letter; P. Rutledge Letter; A. Naegele Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; CMT Letter; NASAA Letter; Cornell Sec. Law Clinic Letter; and CFA Letter.

⁶¹ See CityVest Letter (supporting masters level degree in business, accounting, economics, or law); J. Smith (supporting advanced finance degrees); J. Angel Letter (supporting Master of Science in Finance); B. Crane Letter (supporting Ph.D. in a “business related discipline”); CCMC Letter (supporting doctoral degrees in accounting, finance, or economics); Cornell Sec. Clinic Letter (supporting advanced degrees in finance); AIC Letter (supporting mathematics, science (e.g., physics or computer science), business, accounting, finance, economics, or law); and D. Burton Letter (supporting advanced degrees in business, business administration or business management, entrepreneurship, economics, finance, or accounting).

⁶² See CFA Letter and S. Moller Letter.

⁶³ See ACA Letter (certifications from Angel Capital Association’s ACA University); J. Angel Letter (undergraduate degree in business); letter from Christy Logan dated Dec. 20, 2019 (“C. Logan Letter”) (“reasonable education”); R. Langenbach Letter (“some certain education/certification”); AIC Letter (bachelor’s, bachelor’s equivalent, or higher degree (such as a master’s or J.D.) from an accredited educational institution in a discipline that requires a significant amount of statistical or quantitative analysis or acquaintance with business and legal issues); D. Burton Letter (medical and advanced scientific, engineering, or technology degrees); BIO Letter (proposing to include “Doctor of Philosophy (Ph.D.) in the hard sciences, Medical Doctor degrees (MD), or Master of Science (MS) in

Continued

support including any educational experience, citing disparities in educational quality.⁶⁴

Commenters also responded to a request for comment in the Proposing Release on whether the Commission should include professional experience in areas such as finance and investing, apart from professional certifications and designations, as another means for qualifying for accredited investor status. Several commenters supported using professional experience,⁶⁵ some of whom also recommended including investing experience.⁶⁶ No commenters specifically opposed including professional experience.

The Proposing Release also solicited comment on whether the Commission should develop an accredited investor examination and whether the Commission should allow individuals to self-certify that they have the requisite financial sophistication to be an accredited investor. Of the commenters responding to the request for comment on an accredited investor examination, most supported an accredited investor examination,⁶⁷

hard sciences for the specific purpose of participating in the seed and early stage funding of biotechnology companies”).

⁶⁴ See S. Arab Letter.

⁶⁵ See ABA FR of Sec. Comm. Letter (stating that expanding the accredited investor definition to include investors with relevant experience in respect of the particular investment “would increase investment opportunities with little or no impact on investor protection”); letter from Hunter Todd dated Dec. 19, 2019 (“H. Todd Letter”); letter from Omar Plummer dated Dec. 20, 2019 (“O. Plummer Letter”) (would extend accredited investor status to individuals who “have participated in investment banking and can prove they did, or do in fact, still have a license”); letter from Jeffrey P. Jacobson dated Feb. 7, 2020 (“J. Jacobson Letter”); letter from Andrew Rea dated Jan. 2, 2020 (“A. Rea Letter”) (would extend accredited investor status to “people with a certain amount of years working in venture-backed startups or venture capital funds themselves”); letter from Dar’shun Kendrick dated Dec. 19, 2019 (“D. Kendrick Letter”); letter from Timo Muro dated Dec. 19, 2019 (“T. Muro Letter”); letter from Thomas Englis dated Dec. 19, 2019 (“T. Englis Letter”) (noting that “[h]aving worked in the venture capital industry for 4 years, I have a very high level of knowledge of technology startups . . . [t]he existing law does not accurately measure an individual’s knowledge of risk”); CCMC Letter; AIC Letter; Artivist Letter; BIO Letter (stating that “[s]cientific professionals are uniquely knowledgeable and experienced in [early stage biotechnology companies] and can more accurately assess the risks of a scientific endeavor than the vast majority of investors”); and K. Wilson Letter.

⁶⁶ See letter from Matthew Youngs dated Feb. 4, 2020, (“M. Youngs Letter”); A. Naegele Letter; letter from Michael Penn Smith dated Dec. 20, 2019 (“M. Smith Letter”) (positing that “there’s no good reason to deny knowledgeable retail investors access to venture investments”); letter from Matthew M. Peterson dated Dec. 26, 2019; SIFMA Letter; ABA FR of Sec. Comm.; and K. Wilson Letter.

⁶⁷ See T. Black Letter; letter from Einar Vollset dated Dec. 18, 2019 (“E. Vollset Letter”); B.

while a few did not.⁶⁸ One commenter expressed a preference for an accredited investor exam due to concerns about the cost of the Series 7, 65, and 82 exams.⁶⁹ Regarding self-certification, although some commenters were in favor,⁷⁰ some were opposed.⁷¹ One commenter cited the difficulty of procuring necessary documentation for foreign nationals to prove net worth as a reason to allow self-certification of financial sophistication.⁷² Another supported self-certification only as a component of a broader certification regime that would also include a qualifying examination and attaining sufficient private market and/or early-stage investing experience.⁷³ One commenter who opposed self-certification argued that it would not be subject to any standards,⁷⁴ while another commenter argued that “the average investor will be in no position to make unbiased determinations regarding their own financial sophistication.”⁷⁵

Delaplane Letter; letter from Mark Headrick dated Feb. 7, 2020 (“M. Headrick Letter”); M. Youngs Letter; Crowdwise Letter; letter from Josh Kelner dated Jan. 10, 2020 (“J. Kelner Letter”); A. Naegele Letter; letter from Wiebke Zuch dated Jan. 8, 2020 (“W. Zuch Letter”); letter from Tony Sparks dated Jan. 2, 2020 (“T. Sparks Letter”) (supporting an accredited investor exam because “it’s wise for people to be somewhat informed on how investments work before they invest”); letter from Bruce A. Wallick dated Dec. 19, 2019 (“B. Wallick Letter”) (positing that “[w]hat’s really needed to evaluate various investments and avoid endangering one’s wealth is adequate analytical skill . . . [p]erhaps requiring some case study investment analysis as part of the test would be sufficient to determine level of understanding”); letter from Patrick Poole dated Dec. 20, 2019 (“P. Poole Letter”); A. Hemmingsen Letter; Mercer Advisors Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; Carta Letter; R. Doyal Letter and R. Black Letter; letter from Ben Lawrence dated Apr. 15, 2020 (“B. Lawrence Letter”); and D. Burton Letter.

⁶⁸ See P. Rutledge Letter (preferring FINRA-administered exams because “FINRA is subject to SEC oversight and has existing mechanisms for making examination-related information publicly available”) and J. Angel Letter.

⁶⁹ See E. Vollset Letter (noting that the Series 7, 65, and 82 exams “likely would cost more to obtain than a lot of people are willing to invest”).

⁷⁰ See M. Douglas Letter; J. Angel Letter; K. Pulavarthi Letter; D. Burton Letter; letter from Gregory S. Fryer dated March 16, 2020 (“G. Fryer Letter”) (supporting self-certification for investors investing less than \$15,000); and G. Freedman Letter.

⁷¹ See P. Rutledge Letter; Crowdwise Letter; Mercer Advisors Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; NASAA Letter; R. Maud Letter; and CFA Institute Letter (noting that “[b]ehavioral science has long recognized overconfidence bias in general and has specifically documented individuals’ overconfidence in their investing skills and financial knowledge”).

⁷² See K. Pulavarthi Letter.

⁷³ See Crowdwise Letter.

⁷⁴ See NASAA Letter.

⁷⁵ See Md St. Bar Assn. Comm. on Sec. Laws Letter.

Under the proposed approach, individuals with certain professional certifications and designations or other credentials would qualify as accredited investors regardless of their net worth or income. The Proposing Release requested comment on whether additional conditions, such as investment limits, for individuals with these certifications, designations, or credentials should be considered. A few commenters supported investment limits,⁷⁶ while others did not.⁷⁷ One commenter who recommended imposing investment limits expressed the view that individuals who do not meet the current net worth or income thresholds, “while possibly financially sophisticated, could not sustain larger losses from these types of investments,” and favorably noted the investment limits in place under Regulation A and Regulation Crowdfunding.⁷⁸ Conversely, another commenter expressed concern about the administrative burden of investment limits and stated that it would “substantially reduce the attractiveness of this approach (as it has for Regulation A and Regulation CF).”⁷⁹ Another commenter stated that such limits may “continue to propagate the disparate impact that the current standards have on women, minority and rural investors.”⁸⁰

As proposed, individuals who obtain the designated professional credentials would be required to maintain these certifications or designations in good standing in order to qualify as accredited investors. Several commenters supported a good-standing requirement.⁸¹ One of these commenters based its support of a good-standing requirement on the need to maintain up-to-date knowledge.⁸² In contrast, another commenter opposed such a requirement, suggesting that a good standing requirement would impose a “needless barrier” to investment.⁸³

⁷⁶ See A. Naegele Letter; Mercer Advisors Letter; and Artivist Letter.

⁷⁷ See L. Glover Letter; HLWG Letter; CCMC Letter; and D. Burton Letter.

⁷⁸ See Mercer Advisors Letter.

⁷⁹ See D. Burton Letter.

⁸⁰ See CCMC Letter.

⁸¹ See letter from Da Kui dated Jan. 10, 2020 (“D. Kui Letter”); A. Naegele Letter; Mercer Advisors Letter; HLWG Letter; R. Maud Letter; letter from Jiaxin Na dated Mar. 13, 2020 (“J. Na Letter”); and Geraci Letter and AAPL Letter.

⁸² See D. Kui Letter (noting that, without a good standing requirement “the investor may no longer have up-to-date knowledge and information about the related fields, especially when considering the increasingly changing world of finance and investment”).

⁸³ See D. Burton Letter (stating that “[t]he general investment knowledge imparted by these programs will not materially dissipate or decline, particularly

The Proposing Release also requested comment on whether individuals who obtain the designated professional credentials should also be required to practice in the fields related to the certifications or designations, or to have practiced for a minimum number of years. A few commenters suggested that the Commission require professional experience,⁸⁴ with one expressing the view that the “ability to pass a test is no substitute for demonstrable investing or financial services experience.”⁸⁵ One commenter opposed a work experience requirement for individuals who pass the Series 7 and 65 exams, noting that such individuals “can practice as securities professionals without an apprenticeship or relevant experience.”⁸⁶

The proposed amendments included a mechanism by which the Commission would designate qualifying professional credentials by order and noted that the Commission “anticipate[d] that the Commission generally would provide public notice and an opportunity for public comment before issuance of such order.”⁸⁷ Two commenters raised Administrative Procedure Act (“APA”) concerns with this approach.⁸⁸ Both commenters indicated that the Commission should provide the public

if the person is making investments. The Commission should not erect needless barriers reducing access to these investments. It should not actively create an advantage for those it regulates (*i.e.* those in the securities industry) by requiring that a person be associated with a broker-dealer”).

⁸⁴ See NASAA Letter (noting that a level of years of experience should be required); letter from Nasdaq, Inc. dated May 18, 2020 (“Nasdaq Letter”) (noting that “most professional designations or certifications alone [do not] suffice to establish the financial sophistication and independent judgment required to evaluate private investments that are inherently risky and illiquid. An examination of knowledge, without an additional requirement of industry experience, is not a satisfactory means to determine whether an investor can bear the risk of and evaluate a potential investment in an exempt offering without the benefit of a registration statement or similar disclosure”). See also Geraci Letter and AAPL Letter (supporting inclusion of Series 7, 65, and 82 license holders without an experience requirement, but conditioning support for the inclusion of CPAs, JDs, CFAs, and CAIAs on having three years of experience, and noting that the experience requirement “protect[s] newly licensed individuals, who may not be familiar with the real world applications of their education, from partaking in inappropriate investment opportunities”).

⁸⁵ See NASAA Letter.

⁸⁶ See L. Grover Letter.

⁸⁷ See Proposing Release at 2581.

⁸⁸ See NASAA Letter (suggesting that the “policy would also potentially violate the Administrative Procedure Act, as the new accredited investor standards would likely constitute legislative rules, for which public notice and comment are required”) and CA Attorney General et al. Letter (“[t]he proposed process fails to afford stakeholders an opportunity to provide valuable insight on proposed changes and violates the Administrative Procedures Act”). See also 5 U.S.C. 551 *et seq.*

with the opportunity to comment on any additional categories of qualifying professional credentials before issuing a final order. Another commenter similarly encouraged the Commission to provide public notice and an opportunity for public comment before issuance of such an order.⁸⁹ Other commenters were generally supportive of the proposal to designate the professional credentials by order.⁹⁰

We also requested comment on the proposed non-exclusive list of attributes that the Commission would consider in determining which professional certifications and designations or other credentials qualify for accredited investor status. A few commenters expressed support for the proposed list.⁹¹ One proposed attribute was an indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body. One commenter expressed support for this attribute but suggested that it be broadened to include not only publicly available certifications, but also those relevant certifications that may be “otherwise independently verifiable.”⁹² In addition, one commenter urged the Commission to establish a routine review of the defined list of eligible designations, certifications, and licenses.⁹³

ii. Final Amendments

After considering the comments, we are adopting the amendment substantially as proposed. We continue to believe that certain professional certifications and designations or other credentials provide a reliable indication that an investor has a sufficient level of

⁸⁹ See IWI Letter.

⁹⁰ See ABA FR of Sec. Comm. Letter and D. Burton Letter.

⁹¹ See Fidelity Letter; CFA Institute Letter (noting that “[w]e believe the Release articulates sound principles in its non-exclusive list of attributes that it would consider in determining which professional certifications and designations or other credentials qualify for accredited investor status”); and ABA FR of Sec. Comm. Letter (“[t]he Committee supports this approach, which would be based on criteria that are verifiable and provide ongoing flexibility for the Commission to add further appropriate investor categories”).

⁹² See Fidelity Letter (noting that such approach “[p]rovides the SEC flexibility as it considers additions to the list of professional certifications that meet its specified criteria in the future, which may not necessarily be searchable on a public website, but would be otherwise verifiable, such as on an access-controlled website”).

⁹³ See Carta Letter (“[t]he final rule should provide the Commission with flexibility to reevaluate previously designated certifications, designations, or credentials if they change over time, and also designate other, possibly new, certifications, designations, or credentials that meet specified criteria”).

financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. We note that many commenters agreed with our conclusion in this regard. Further, we continue to believe that relying solely on financial thresholds as an indication of financial sophistication is suboptimal, including because it may unduly restrict access to investment opportunities for individuals whose knowledge and experience render them capable of evaluating the merits and risks of a prospective investment—and therefore funding for themselves—in a private offering, irrespective of their personal wealth. While certain of these individuals may have fewer financial resources and, as a result, be less able to bear the financial risk of private investments, as one commenter suggested,⁹⁴ we believe their professional credentials and experience should enable these investors to assess investment opportunities, appropriately allocate capital based on their individual circumstances, including whether to reallocate investment capital between private investments and other equivalent-sized investments, and otherwise make appropriately informed decisions regarding their financial interests, including their ability to bear the financial risk.

As proposed, the final amendment provides that the Commission may designate qualifying professional certifications, designations, and other credentials by order, with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential. Also as proposed, the final amendment includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status. As noted in the Proposing Release, given the evolving nature of market and industry practices, this approach will provide the Commission with flexibility to reevaluate previously designated certifications, designations, or credentials if they change over time, and also to designate other certifications, designations, or credentials if new certifications, designations, or credentials develop or are identified that are consistent with the specified criteria and that the Commission determines are appropriate. Although a few commenters questioned this approach, we believe that

⁹⁴ See *supra* note 26.

designating credentials by order is consistent with the APA. The rules provide specific standards by which the Commission will evaluate additional qualifying credentials. Moreover, consistent with commenters' suggestions, we are revising the final rules to clarify that, in connection with any future designations of qualifying credentials, the Commission will provide notice and an opportunity for public comment before issuing any final order. To assist members of the public, the professional certifications and designations and other credentials currently recognized by the Commission as satisfying the adopted criteria will be posted on the Commission's website.

We agree with the commenter's suggestion that the non-exclusive attribute requiring that an indication that the individual holds the certification or designation be made publicly available by the relevant self-regulatory organization or other industry body should be expanded to include that the certification or designation could also be otherwise independently verifiable.⁹⁵ This addition will provide the Commission with flexibility as it considers whether to add future certifications or designations that are not publicly available but would be independently verifiable.

We are also adopting a good-standing requirement, which was supported by many commenters addressing the requirement, but are not requiring that the individual practice in the fields related to the certification, except to the extent that continued affiliation with a firm is required to maintain the certification, designation, or credential.⁹⁶ We continue to believe that passing the requisite examinations and maintaining an active certification, designation, or license is sufficient to demonstrate the individual's financial sophistication to invest in exempt offerings, even when the individual is not practicing in an area related to the certification or designation. We also continue to believe that an inactive certification, designation, or license, particularly when the certification or designation has been inactive for an extended period of time, could lessen the validity of the certification or

designation as a measure of financial sophistication. We are not, however, adopting a requirement that individuals holding qualifying credentials must practice in the fields related to the certifications or designations or that such individuals have practiced for a minimum number of years. We are concerned that adding such additional criteria would make it more difficult for financially sophisticated investors to demonstrate, and issuers and other market professionals to verify, accredited investor status, but would not provide significant additional protection for investors.

In connection with the adoption of this amendment, in a separate order, we are designating the General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), and the Licensed Investment Adviser Representative (Series 65) as the initial certifications, designations, or credentials designated by the Commission under Rule 501(a)(10). Of the various professional certifications, designations, and credentials on which we received comment, these received significant support. The Series 7 license qualifies a candidate "for the solicitation, purchase, and/or sale of all securities products, including corporate securities, municipal securities, municipal fund securities, options, direct participation programs, investment company products, and variable contracts."⁹⁷ The Series 65 exam is designed to qualify candidates as investment adviser representatives and covers topics necessary for adviser representatives to understand to provide investment advice to retail advisory clients.⁹⁸ The Series 82 license qualifies candidates seeking to effect the sales of private securities offerings.⁹⁹

In light of the subject matter encompassed by these exams, and for the reasons stated above and in the

Proposing Release, we believe that individuals who have passed these examinations and hold their certifications or designations in good standing have demonstrated a sufficient level of financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. In this regard, we note that these certifications and designations are required in order to represent or advise others in connection with securities market transactions.¹⁰⁰ To comply with the good standing requirement, the General Securities Representative license holder, the Private Securities Offerings Representative license holder,¹⁰¹ and the Licensed Investment Adviser Representative must have passed the required examinations and must maintain the individual's license or registration, as applicable, in good standing.¹⁰²

Issuers must take reasonable steps to verify whether an investor in a Rule 506(c) offering is an accredited investor. As a result, readily available information on whether an individual actively holds a particular certification or designation is useful in determining accredited investor status under Rule 501(a)(10). These certifications and designations have the advantage of being relatively easy to verify, while some other certifications and designations may be more difficult to verify. Issuers and other market participants will be able to obtain registration and licensing information about registered representatives and investment adviser representatives easily through FINRA's BrokerCheck¹⁰³ or the Commission's Investment Adviser Public Disclosure database.¹⁰⁴

The following table sets out an estimate of the number of individuals that may hold the certifications and designations described above:

⁹⁷ FINRA developed and administers the Series 7 examination. An individual must be associated with a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam and be granted a license. See <https://www.finra.org/registration-exams-ce/qualification-exams/series7>.

⁹⁸ NASAA developed the Series 65 examination, and FINRA administers it. An individual does not need to be sponsored by a member firm to take the exam, and successful completion of the exam does not convey the right to transact business prior to being granted a license or registration by a state. See <https://www.nasaa.org/exams/study-guides/series-65-study-guide>.

⁹⁹ FINRA developed and administers the Series 82 examination. An individual must be associated with and sponsored by a FINRA member firm or other applicable self-regulatory organization member firm to be eligible to take the exam. See <https://www.finra.org/registration-exams-ce/qualification-exams/series82>.

¹⁰⁰ See Geraci Letter and AAPL Letter (noting that "such a [Series 7, 65, or 82] license enables them to evaluate investments on behalf of third parties, thus qualifying them to effectively evaluate investment opportunities on their own behalf as well").

¹⁰¹ To maintain their certifications and designations in good standing, General Securities Representatives and Private Securities Offerings Representatives are subject to continuing education requirements under FINRA rules.

¹⁰² As noted in note 98, the successful completion of the Series 65 exam does not convey the right to transact business prior to being granted a license or registration by a state. See also Proposing Release at 2581. To qualify as an accredited investor, a Licensed Investment Adviser Representative must maintain, in good standing, the individual's state-granted license or registration.

¹⁰³ See <https://brokercheck.finra.org>.

¹⁰⁴ See <https://www.adviserinfo.sec.gov/IAPD/Default.aspx>.

⁹⁵ See *supra* note 92.

⁹⁶ For example, an individual's registration as a general securities representative will lapse two years after the date that his or her employment with a FINRA member has been terminated. See FINRA Rule 1210.08. An individual who ceases to be employed by a FINRA member but whose registration remains current will continue to qualify as an accredited investor until such registration lapses.

TABLE 1—ESTIMATED NUMBER OF INDIVIDUALS HOLDING SPECIFIED CERTIFICATIONS AND DESIGNATIONS

Certification/designation	Number of individuals
Registered Securities Representative	105 691,041
State Registered Investment Adviser Representative	106 17,543

The final rules will initially result in an increase in the number of individuals that qualify as accredited investors. However, we cannot estimate how many individuals that hold the relevant certifications and designations may already qualify as accredited investors under the current financial thresholds, and therefore we are unable to predict how many individuals will be newly eligible under the final rules.¹⁰⁷ As discussed below in Section VI.B, (1) we do not expect that number of newly eligible individual accredited investors to be significant compared to the number of individual investors that currently are eligible to participate in private offerings, and (2) we expect the amount of capital invested by such newly eligible individual investors to have minimal effects on the private offering market generally.¹⁰⁸ Moreover, as we stated in the Proposing Release, for purposes of updating the accredited investor definition, we believe it is less relevant to focus on the number of individuals that will qualify and more relevant to consider whether the criteria applied appropriately capture the attributes of financial sophistication that is a touchstone of the definition.

Although other professional certifications, designations, and credentials, such as other FINRA exams, a specific accredited investor exam, other educational credentials, or professional experience received broad commenter support, we are taking a measured approach to the expansion of the definition and including only the Series 7, 65, and 82 in the initial order.

¹⁰⁵ As of December 2019. Of this number, 334,860 individuals were registered only as broker-dealers, 294,684 were dually registered as broker-dealers and investment advisers, and 61,497 were registered only as investment advisers. Because FINRA-registered representatives can be required to hold multiple professional certifications, this aggregation likely overstates, potentially significantly, the actual number of individuals that hold a Series 7 or Series 82, and we have no method of estimating the extent of overlap.

¹⁰⁶ As of December 2019.

¹⁰⁷ We also are not able to estimate how many newly-eligible individuals will seek to make investments as accredited investors.

¹⁰⁸ We note that new investment from newly eligible individual accredited investors may be significant in certain small offerings. See discussion in Section VI.C.5.

While we recognize that there may be other professional certifications, designations, and credentials that indicate a similar level of sophistication in the areas of securities and investing, we believe it is appropriate to consider these other credentials after first gaining experience with the revised rules. However, as described above, the process we are adopting, by which the Commission may designate qualifying professional certifications, designations, and credentials by order, will provide the Commission with flexibility to designate other certifications, designations, or credentials if new certifications, designations, or credentials develop or are identified that are consistent with the specified criteria and that the Commission determines are appropriate. As a result, if an accredited educational institution, self-regulatory organization, or other industry body believes that it has a program of study or credential that fulfills the non-exclusive list of attributes enumerated in 501(a)(10), such institution or body may apply to the Commission for consideration as a qualifying professional certification or designation or credential under 501(a)(10). Similarly, members of the public may wish to propose to the Commission that a specific degree or program of study should be included in the accredited investor definition.¹⁰⁹ Any such proposal does not need to be limited to a degree or program of study at a specific educational institution. Any such request for Commission consideration must address how a particular certification, designation, or credential satisfies the nonexclusive list of attributes set forth in the new rule, and may include additional information that the requestor believes the Commission may wish consider.

In addition, we are not adopting an amendment that would permit individuals to self-certify that they have the requisite financial sophistication to be an accredited investor. We agree with some of the concerns raised by commenters with respect to the lack of standards applicable to such an approach. We note that the Commission will have an opportunity to evaluate its experience with the revised rules in

¹⁰⁹ In addition, the Commission's Investor Advisory Committee, Small Business Capital Formation Advisory Committee, and other advisory committees might assess the effectiveness of our approach and make further recommendations, including additional certifications, designations, or credentials that further the purpose of the accredited investor definition.

connection with its quadrennial review of the accredited investor definition.¹¹⁰

We expect that such reviews will examine not only professional certifications, designations, and credentials, but also the Commission's existing wealth tests. In this regard, to the extent that these certifications, designations, and credentials prove to be effective at capturing the attributes of financial sophistication that is the touchstone of the accredited investor definition, they may influence future consideration of any appropriate adjustment to the wealth tests.

b. Knowledgeable Employees of Private Funds

In the Proposing Release, the Commission proposed to add a category to the accredited investor definition that would enable "knowledgeable employees," as defined in Rule 3c-5(a)(4) under the Investment Company Act, of a private fund to qualify as accredited investors for investments in the fund.¹¹¹ Rule 3c-5(a)(4) under the Investment Company Act defines a "knowledgeable employee" with respect to a private fund as: (i) An executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the private fund or an affiliated management person (as defined in Rule 3c-5(a)(1)) of the private fund; and (ii) an employee of the private fund or an affiliated management person of the private fund (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such private fund, other private funds, or investment companies the investment activities of which are managed by such affiliated management person of the private fund, provided that such employee has been performing such functions and duties for or on behalf of the private fund or the affiliated management person of the private fund, or substantially similar

¹¹⁰ Section 413(b)(2)(A) states that this Commission review must be conducted not earlier than four years after the enactment of the Dodd-Frank Act and not less frequently than once every four years afterward. The next review is required to be conducted in or by 2023.

¹¹¹ Private funds, such as hedge funds, venture capital funds, and private equity funds, are issuers that would be an investment company, as defined in Section 3 of the Investment Company Act, but for the exclusion from the definition of "investment company" in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act. Private funds generally rely on Section 4(a)(2) and Rule 506 to offer and sell their interests without registration under the Securities Act.

functions or duties for or on behalf of another company for at least 12 months.

i. Comments

Commenters generally supported the proposal to add knowledgeable employees of private funds to the definition of accredited investor,¹¹² with one commenter opposed to expanding the accredited investor definition to include these individuals.¹¹³

Several commenters recommended that we expand the definition of knowledgeable employee for purposes of determining accredited investors. For example, some commenters recommended that we include a broader pool of employees in the definition, such as analysts and contract administrators.¹¹⁴ Two commenters requested that we expand the definition of knowledgeable employee to include knowledgeable employees of managing entities.¹¹⁵ Another commenter stated that employees often invest in or through entities affiliated with their employer other than the fund itself, including, for example, the general partner or equivalent entity of the fund. This commenter requested that we permit knowledgeable employees to be accredited investors when acquiring securities of any affiliated management person of a private fund and any entity or vehicle that, directly or indirectly, primarily owns an interest in such private fund or affiliated management person.¹¹⁶ This commenter also recommended expanding the definition of accredited investor to cover individuals investing in privately

¹¹² See P. Rutledge Letter; J. LaBerge Letter; A. Naegele Letter; Geraci Letter; A. Hemmingsen Letter; letter from Stephen Clossick dated Dec. 31, 2019 (“S. Clossick Letter”); letter from Shaun Jolley dated Mar. 10, 2020 (“S. Jolley Letter”); IPA Letter; S. Moller Letter; ALTI Letter; CCMC Letter; SBIA Letter; Republic Letter; Better Markets Letter; AIC Letter; J. Na Letter; MFA and AIMA Letter; Cornell Sec. Clinic Letter; letter from Institutional Limited Partners Association dated Mar. 14, 2020 (“ILPA Letter”); Artivest Letter; ABA FR of Sec. Comm. Letter; and Geraci Letter and AAPL Letter.

¹¹³ See CA Attorney General et al. Letter (opposing the expansion of the accredited investor definition to include more individual investors).

¹¹⁴ See letter from S. Laughlin Letter dated Feb. 6, 2020 (“S. Laughlin Letter”) and S. Clossick Letter. In addition, one commenter suggested allowing knowledgeable employees of non-fund issuers to meet the definition of accredited investor (see P. Rutledge Letter), while others were opposed to including such employees (see D. Kui Letter and A. Naegele Letter).

¹¹⁵ See Geraci Letter and AAPL Letter. See also Republic Letter (supporting including knowledgeable employees of private funds in the definition and requesting clarification that principals and knowledgeable employees of investment advisers (whether registered or exempt) to private funds are included in the expanded definition).

¹¹⁶ See AIC Letter.

offered pooled investment vehicles that rely on an exemption other than Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, where such individuals would be knowledgeable employees with respect to such vehicles (as defined in Rule 3c-5 under the Investment Company Act) if the vehicles were relying on Section 3(c)(1) or 3(c)(7). Several commenters also recommended expanding the definition of accredited investor to include all “qualified purchasers” as defined in Section 2(a)(51)(A) of the Investment Company Act.¹¹⁷

The Proposing Release requested comment on whether a knowledgeable employee’s accredited investor status should be attributed to his or her spouse and/or dependents when making joint investments in private funds for purposes of the accredited investor definition. Commenters that responded to this question generally supported this approach.¹¹⁸ For example, one commenter suggested attributing accredited investor status to joint investments with spouses or dependents, family corporates, or estate-planning vehicles.¹¹⁹ Another commenter suggested attributing accredited investor status to a knowledgeable employee’s spouse and/or dependents only when such investment decisions are jointly made with the agreement of all persons in the particular joint investment.¹²⁰

ii. Final Amendments

We are adopting, as proposed, the addition of a category to the accredited investor definition that will enable “knowledgeable employees” of a private fund to qualify as accredited investors for investments in the fund. The new category of accredited investor will be the same in scope as the definition of “knowledgeable employee” in Rule 3c-5(a)(4).¹²¹ It includes, among other persons, trustees and advisory board members, or persons serving in a similar capacity, of a Section 3(c)(1) or 3(c)(7) fund or an affiliated person of the fund that oversees the fund’s investments, as well as employees of the private fund or the affiliated person of the fund (other than employees performing solely clerical, secretarial, or administrative

¹¹⁷ See AIC Letter; Calfee Letter; IAA Letter; ABA FR of Sec. Comm. Letter; and MFA and AIMA Letter.

¹¹⁸ See A. Hemmingsen Letter; AIC Letter; and J. Na Letter. One commenter opposed attributing a knowledgeable employee’s accredited investor status to his or her spouse and/or dependents when making joint investments in private funds. See A. Naegele Letter.

¹¹⁹ See AIC Letter.

¹²⁰ See J. Na Letter.

¹²¹ See Rule 501(a)(11).

functions) who, in connection with the employees’ regular functions or duties, have participated in the investment activities of such private fund for at least 12 months.¹²² This category will be similar to the existing category for directors, executive officers, or general partners of the issuer (or directors, executive officers, or general partners of a general partner of the issuer).¹²³

As discussed in the Proposing Release, we believe that such employees, through their knowledge and active participation of the investment activities of the private fund, are likely to be financially sophisticated and capable of fending for themselves in evaluating investments.¹²⁴ These employees, by virtue of their position with the fund, are presumed to have meaningful investing experience and sufficient access to the information necessary to make informed investment decisions about the fund’s offerings. Allowing these employees to invest in the funds for which they work (and other funds managed by their employer) as accredited investors also may help to align their interests with those of other investors in the fund.

We are not modifying this definition to include additional types of employees as suggested by commenters. We continue to believe that the existing definition of knowledgeable employee accurately captures non-executive employees with sufficient knowledge and expertise to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. We also believe issuers will benefit from the consistency with the current knowledgeable employee definition. The definition is intended to cover non-executive employees only if they actively participate in the investment activities of the fund, any other private fund or any investment

¹²² The scope of the term “knowledgeable employee” in Rule 3c-5(a)(4) also includes executive officers, directors, and general partners, or persons serving in a similar capacity, of a Section 3(c)(1) or 3(c)(7) fund or an affiliated person of the fund that oversees the fund’s investments. For these persons, the new category for “knowledgeable employees” in the definition of “accredited investor” will overlap with the existing category in Rule 501(a)(4). A person is determined to be a knowledgeable employee at the time of investment. See Rule 3c-5(b)(1).

¹²³ Rule 501(a)(4). We are not modifying the definition to include knowledgeable employees of non-fund issuers, as suggested by one commenter, in light of this existing category set forth in Rule 501(a)(4), which is applicable to non-fund and fund issuers.

¹²⁴ As is the case under Rule 3c-5(a)(4), the scope of “knowledgeable employees” under this proposed amendment will not include employees who simply obtain information but do not participate in the investment activities of the fund.

company the investment activities of which are managed by the fund's affiliated management person. We believe that participating in the management of a fund's investments is what gives the employee sufficient knowledge and expertise to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. Whether any particular employee is one who participates in the investment activities of a fund is a determination that must be made on a case-by-case basis.

We generally believe that many employees of managing entities are likely included in the knowledgeable employee definition through the concept of "affiliated management persons" (as defined by Rule 3c-5 under the Investment Company Act) and existing language in the knowledgeable employee definition that includes persons who in connection with their regular functions or duties, participate in the investment activities of the fund, or other funds or investment companies the investment activities of which are managed by affiliated management persons of the fund.¹²⁵ Rule 501(a)(11) does not limit accredited investor status to only those knowledgeable employees making investments in the private fund of which they participate in the management. In addition, because the definition of knowledgeable employee is intended to capture individuals who do not need the protection of the Securities Act when investing in private funds, we do not see a need to expand the definition to accommodate arrangements where employees invest in entities other than private funds.

The inclusion of knowledgeable employees in the definition of "accredited investor" will also allow these employees to invest in the private fund without the fund itself losing accredited investor status when the fund has assets of \$5 million or less. Under Rule 501(a)(8), private funds with assets of \$5 million or less may qualify as accredited investors if all of the fund's equity owners are accredited investors.¹²⁶ Unless they qualify as

¹²⁵ See Rule 3c-5(a)(1) (defining "affiliated management person"). For purposes of Rule 3c-5(a)(1), an investment adviser to a private fund is an affiliated management person of the fund to the extent that the investment adviser, whether registered or not, manages the fund's investment activities.

¹²⁶ A private fund may qualify as an accredited investor if it holds total assets in excess of \$5 million and is a corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered. A private fund may also be able to qualify as an accredited investor if it is a trust with total

accredited investors, these small private funds could be excluded from participating in some offerings under Rule 506 that are limited to accredited investors. Amending the accredited investor definition in this manner will allow knowledgeable employees to invest in these small private funds as accredited investors, while permitting the funds to remain eligible to qualify as accredited investors under Rule 501(a)(8) and potentially participate in certain offerings under Rule 506 in which they would not otherwise be eligible to participate.

We believe Congress's intent to apply the spousal joint interest position in Section 2(a)(51)(A)(i) of the Investment Company Act should also apply to a knowledgeable employee and his or her spouse in the context of accredited investor status under Rule 501(a)(11).¹²⁷ We therefore believe it is appropriate to attribute a knowledgeable employee's accredited investor status to his or her spouse with respect to joint investments made by the knowledgeable employee and his or her spouse in a private fund.¹²⁸

After considering comments, we are not modifying the definition of accredited investor to include "qualified purchasers" as defined in Section 2(a)(51)(A) of the Investment Company Act. Most qualified purchasers already meet the definition of accredited investor by virtue of the higher financial thresholds required to qualify as a qualified purchaser.¹²⁹ While there may

assets in excess of \$5 million that was not formed for the specific purpose of acquiring the securities offered, and the purchase is directed by a sophisticated person.

¹²⁷ This is consistent with the American Bar Association Section of Business Law, SEC Staff No-Action Letter (Apr. 22, 1999) ("ABA Letter"). In the ABA Letter, staff stated that it would not recommend enforcement action under Section 7 of the Investment Company Act if a knowledgeable employee and his or her spouse who is not a knowledgeable employee (or a qualified purchaser) invest jointly in a Section 3(c)(7) fund. The staff took this position because it believed Congress's intent to apply the spousal joint interest position should apply in the context of Rule 3c-5.

¹²⁸ We do not believe it is appropriate to attribute a knowledgeable employee's accredited investor status to joint investments other than those held with the knowledgeable employee's spouse. This is consistent with the Commission's position with respect to qualified purchasers. Under Section 2(a)(51)(A)(i) of the Investment Company Act, a spouse who is not a qualified purchaser can hold a joint interest in a Section 3(c)(7) fund with his or her qualified purchaser spouse. However, dependents of a qualified purchaser who are not themselves qualified purchasers may not hold a joint interest in a Section 3(c)(7) fund with the qualified purchaser. See ABA Letter. See also Privately Offered Investment Companies, Release No. IC-22597 (Apr. 3, 1997) [62 FR 17512 (Apr. 9, 1997)].

¹²⁹ See Section 2(a)(51) of the Investment Company Act.

be limited circumstances where this is not the case, we do not believe it is appropriate at this time to further extend the accredited investor definition to include qualified purchasers, given that the "accredited investor" standard and "qualified purchaser" standard are distinct standards that each serves a different regulatory purpose.¹³⁰

We are not able to estimate the number of individuals that will qualify as accredited investors under the amendment to the definition. Using data on private fund statistics compiled by the Commission's Division of Investment Management, we estimate that there were 32,620 private funds as of second quarter 2019.¹³¹ However, we lack data on the number of knowledgeable employees per fund. We also cannot estimate how many individuals that meet the definition of "knowledgeable employee" may already qualify as accredited investors under the current financial thresholds.

2. Entities

In the Proposing Release, the Commission proposed to amend the definition of accredited investor to add several categories of entities: SEC- and state-registered investment advisers, rural business investment companies, limited liability companies, family offices, family clients, and a catch all category.

a. Registered Investment Advisers

The Commission proposed to include in Rule 501(a)(1) investment advisers registered under Section 203 of the Advisers Act¹³² and investment advisers registered under the laws of the various states. The Proposing Release also requested comment on whether exempt reporting advisers should qualify as accredited investors.¹³³

i. Comments

Several commenters supported adding SEC- and state-registered investment

¹³⁰ See *supra* note 8.

¹³¹ See <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q2.pdf>.

¹³² See Section 203 of the Advisers Act (15 U.S.C. 80b-3).

¹³³ An exempt reporting adviser is an investment adviser that qualifies for the exemption from registration under Section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under Rule 203(m)-1 of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than \$150 million. See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)].

advisers to the definition of accredited investor.¹³⁴ Commenters supporting their inclusion generally stated that registered investment advisers have the investment acumen to make allocations of capital and discern among investments, including in the private placement market.¹³⁵ While no commenters indicated they opposed this addition, one commenter recommended that the Commission narrow the definition to include only advisory firms, and not natural persons who are registered investment advisers.¹³⁶ This commenter expressed the view that natural persons should be evaluated under the wealth tests that apply to individuals. Other commenters, on the other hand, recommended that the Commission expand the definition to include exempt reporting advisers, noting that exempt reporting advisers are professionals managing either venture capital funds or small investment funds as a business.¹³⁷

ii. Final Amendments

We are adopting the amendment with certain modifications from our proposal. We believe that registered investment advisers, including those that are sole proprietorships, have the requisite financial sophistication needed to conduct meaningful investment analysis. As discussed in the Proposing Release, registered investment advisers are generally considered to be institutional investors under state law, and we see no compelling reason to distinguish SEC- and state-registered investment advisers acting for their own account from other institutional investors already treated as accredited investors.¹³⁸

As a result, we believe it is appropriate to extend accredited investor status to all SEC- and state-registered investment advisers. We estimate that there are currently approximately 13,400 SEC-registered investment advisers and approximately 17,500 state-registered investment

advisers.¹³⁹ We are not able to estimate, however, how many of those SEC- or state-registered investment advisers meet the \$5 million assets test under Rule 501(a)(3) and therefore currently qualify as accredited investors.

After considering comments, we also believe it is appropriate to include exempt reporting advisers in the definition of accredited investor. We believe exempt reporting advisers, as advisers to private funds, have the requisite financial sophistication needed to conduct meaningful investment analysis. To qualify as an exempt reporting adviser under Section 203(m) or Section 203(l) of the Advisers Act, an adviser would otherwise be required to register as an investment adviser with the Commission and thereby meet the minimum asset thresholds triggering such requirement.¹⁴⁰ Additionally, private funds themselves are institutional investors and all investors therein are presumed to be financially sophisticated. We estimate that there are currently approximately 4,244 exempt reporting advisers.¹⁴¹ We are not able to estimate, however, how many of those exempt reporting advisers may meet the \$5 million assets test under Rule 501(a)(3) and therefore currently qualify as accredited investors.

b. Rural Business Investment Companies

The Commission proposed to include rural business investment companies (“RBIC”) in Rule 501(a)(1). A RBIC is defined in Section 384A of the Consolidated Farm and Rural Development Act¹⁴² as a company that is approved by the Secretary of Agriculture and that has entered into a participation agreement with the Secretary.¹⁴³ RBICs are intended to

promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in such areas.¹⁴⁴ Their purpose is similar to the purpose of small business investment companies (“SBICs”), which are intended to increase access to capital for growth stage businesses.¹⁴⁵ Because SBICs and RBICs share the common purpose of promoting capital formation in their respective sectors, advisers to SBICs and RBICs are treated similarly under the Advisers Act in that they have the opportunity to take advantage of expanded exemptions from investment adviser registration.¹⁴⁶ SBICs are already accredited investors under Rule 501(a)(1) and the Commission proposed to include RBICs as accredited investors under Rule 501(a)(1).

i. Comments

Several commenters supported adding RBICs to the definition of accredited investor,¹⁴⁷ while no commenters opposed the addition. Some commenters stated that including RBICs would serve as a critical source of capital for rural communities.¹⁴⁸ One commenter further stated that including RBICs would reduce a significant burden that has limited their ability to invest in private businesses.¹⁴⁹ Commenters also agreed that RBICs and SBICs should be treated in the same manner and therefore agreed that RBICs also should be accredited investors.¹⁵⁰

development financing or relevant venture capital financing, and invest in enterprises that will create wealth and job opportunities in rural areas, with an emphasis on smaller enterprises. *See* 7 U.S.C. 2009cc–3(a).

¹⁴⁴ *See* <http://www.rd.usda.gov/programs-services/rural-business-investment-program>.

¹⁴⁵ A SBIC is a type of privately owned and managed investment fund that is licensed and regulated by the U.S. Small Business Administration (“SBA”). A SBIC uses its own capital, plus funds borrowed with an SBA guarantee, to make equity and debt investments in qualifying small businesses. *See* <https://www.sba.gov/partners/sbics>.

¹⁴⁶ Advisers to solely RBICs and advisers to solely SBICs are exempt from investment adviser registration. *See* Advisers Act Sections 203(b)(8) and 203(b)(7), respectively. The venture capital fund adviser exemption deems RBICs and SBICs to be venture capital funds for purposes of the exemption. *See* 15 U.S.C. 80b–3(l). The private fund adviser exemption excludes the assets of RBICs and SBICs from counting towards the \$150 million threshold. 15 U.S.C. 80b–3(m). *See also* Exemptions from Investment Adviser Regulation for Advisers to Certain Rural Business Investment Companies, Investment Advisers Act Release No. 5454 (Mar. 2, 2020) [85 FR 13734 (Mar. 10, 2020)].

¹⁴⁷ *See* P. Rutledge Letter; SBIA Letter; NASAA Letter; CCMC Letter; D. Burton Letter; and ABA FR of Sec. Comm. Letter.

¹⁴⁸ *See* CCMC Letter and SBIA Letter.

¹⁴⁹ *See* SBIA Letter.

¹⁵⁰ *See* SBIA Letter and D. Burton Letter.

¹³⁴ *See* P. Rutledge Letter; A. Hemmingsen Letter; CFA Letter; Mercer Advisors Letter; CCMC Letter; SBIA Letter; NASAA Letter; letter from Financial Planning Coalition dated Mar. 16, 2020 (“FPC Letter”); IWI Letter; and D. Burton Letter.

¹³⁵ *See, e.g.*, CCMC Letter and A. Hemmingsen Letter.

¹³⁶ *See* NASAA Letter.

¹³⁷ *See* P. Rutledge Letter and A. Hemmingsen Letter.

¹³⁸ *See* Proposing Release at 2586 (describing the inclusion of certain institutional investors in the definition of accredited investor, including banks, insurance companies, certain employee benefit plans, investment companies, small business investment companies (“SBICs”), savings and loan associations, credit unions, and registered broker-dealers).

¹³⁹ Of these, 72 SEC-registered investment advisers are sole proprietorships and 1,712 advisers registered with one or more states are sole proprietorships. We do not believe sole proprietorships should be distinguished from other registered investment advisers for purposes of determining accredited investor status.

¹⁴⁰ Advisers must apply for registration with the SEC if their regulatory assets under management are at least \$110 million or if they have regulatory assets under management of at least \$25 million but less than \$100 million and meet one of the requirements to be classified as a “mid-sized adviser.” *See* Section 203A(a)(2) of the Advisers Act. *See also* Form ADV: Instructions for Part 1A, instr. 2.b.

¹⁴¹ Exempt reporting advisers are required to submit, and periodically update, reports on Form ADV. *See* Rule 204–4 under the Advisers Act.

¹⁴² 7 U.S.C. 2009cc.

¹⁴³ *See* Public Law 115–417 (2019). To be eligible to participate as an RBIC, the company must be a newly formed for-profit entity or a newly formed for-profit subsidiary of such an entity, have a management team with experience in community

ii. Final Amendments

We are adopting the amendment as proposed. Because of their common purpose and similar treatment under other federal securities laws, we believe that SBICs and RBICs should be treated similarly under the Securities Act. As SBICs are already accredited investors under Rule 501(a)(1), we continue to believe that RBICs should be included as accredited investors under Rule 501(a)(1).

c. Limited Liability Companies

Rule 501(a)(3) sets forth the following types of entities that qualify for accredited investor status if they have total assets in excess of \$5 million and were not formed for the specific purpose of acquiring the securities being offered: Organizations described in Section 501(c)(3) of the Internal Revenue Code, corporations, Massachusetts or similar business trusts, and partnerships.¹⁵¹ Though this list does not include limited liability companies, which have become a widely adopted corporate form since the Commission last updated the accredited investor rules in 1989 to include additional entities,¹⁵² a longstanding staff position has been that limited liability companies satisfying the other requirements of the definition are eligible to qualify as accredited investors under Rule 501(a)(3).¹⁵³

i. Comments

Several commenters supported adding LLCs,¹⁵⁴ while no commenters opposed the addition. One commenter also suggested that the Commission include “any similar business entity in order to encompass any new form of entity that might be created in the future and thus avoid the problem that has existed with respect to LLCs.”¹⁵⁵ The Proposing

Release also requested comment on whether the Commission should amend its rules to specifically include all managers of limited liability companies as executive officers under Rule 501(f) or whether the rule should be limited to managing members, thereby precluding third-party managers from being considered executive officers under Rule 501(f). Several commenters supported allowing any manager of a limited liability company to qualify as an “executive officer” under Rule 501(f).¹⁵⁶ One commenter stated that it did not believe naming managers was necessary because “they are already covered, to the extent appropriate, by the term ‘executive officer’ as a ‘person who performs similar policy making functions.’”¹⁵⁷

ii. Final Amendments

We are adopting the amendment as proposed. We continue to believe that limited liability companies that meet the requirements of Rule 501(a)(3), including the assets test, should be considered to have the requisite financial sophistication to qualify as accredited investors. Based on data from the Internal Revenue Service, there were 2,696,149 limited liability companies at the end of 2017.¹⁵⁸ However, due to a lack of more detailed publicly available information about limited liability companies, such as the distribution of total assets across companies, we are unable to estimate the number of these limited liability companies that meet the requirements of Rule 501(a)(3). As this amendment is a codification of a long standing staff interpretation, we do not expect that the pool of accredited investors will change significantly as a result of this amendment.

As the Commission noted in the Proposing Release, Rule 501(a)(4) includes as an accredited investor any director, executive officer, or general partner of the issuer of the securities being offered or sold. The term “executive officer” is defined in Rule 501(f) as “the president, any vice president in charge of a principal business unit, division or function, as well as any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer.” Regarding whether to list managers in 501(f) or which managers should be included, while we continue to believe

that managers of limited liability companies, through their knowledge and management of the issuer, are likely to be financially sophisticated and capable of fending for themselves in evaluating investments in the limited liability company’s securities, we also continue to believe that such a manager performs a policy making function for the issuer equivalent to that of an executive officer of a corporation under Rule 501(f), and therefore we do not believe it is necessary to amend Rule 501(a)(4) or Rule 501(f) to specifically include managers of limited liability companies. Further, consistent with the views of commenters on this issue, we do not believe that it is necessary to distinguish between member managers and third-party managers, as either could be considered an executive officer under Rule 501(f).

We are not expanding Rule 501(a)(3) to include any similar business entity, as suggested by a commenter. As discussed below, we believe the new catch-all category for entities in Rule 501(a)(9), which includes an investments test, appropriately addresses new entity types that may be created in the future.

d. Other Entities Meeting an Investments-Owned Test

Certain types of entities, such as Indian tribes, labor unions, governmental bodies and funds, and entities organized under the laws of a foreign country, are not included in the accredited investor definition. The Commission proposed to add a new category in the accredited investor definition for any entity owning “investments,” as that term is defined in Rule 2a51–1(b) under the Investment Company Act, in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered.¹⁵⁹ The Commission indicated in the Proposing Release that the intent of this new category was to capture all existing entity forms not already included within Rule 501(a), such as Indian tribes and governmental bodies, as well as those entity types that may be created in the future.

To assist both issuers and investors, the Commission proposed to incorporate the definition of investments from Rule 2a51–1(b) under the Investment Company Act, which includes, among other things: Securities; real estate, commodity interests, physical commodities, and non-security financial contracts held for investment purposes; and cash and cash

¹⁵¹ See Rule 501(a)(3).

¹⁵² See Regulation D, Release No. 33–6825 (Mar. 15, 1989) [54 FR 11369 (Mar. 20, 1989)].

¹⁵³ See Division of Corporation Finance interpretive letter to Wolf, Block, Schorr and Solis-Cohen (Dec. 11, 1996); and question number 255.05 of Securities Act Rules Compliance and Disclosure Interpretations, available at <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

¹⁵⁴ See P. Rutledge Letter; letter from Farrell Fritz PC dated Jan. 13, 2020 (“Farrell Fritz Letter”); Md St. Bar Assn. Comm. on Sec. Laws Letter; CCMC Letter; SBIA Letter; NASAA Letter; MFA and AIMA Letter (stating that “[w]e believe these changes[, including adding LLCs and the catch-all provision,] are appropriate and will provide objective, bright-line standards for issuers to determine whether certain types of entities qualify as accredited investors”); D. Burton Letter; ABA FR of Sec. Comm. Letter.

¹⁵⁵ See ABA FR of Sec. Comm. Letter (positing that “the concern identified in the Proposing Release regarding other entities, like government bodies for which an asset would not be meaningful, would be addressed”).

¹⁵⁶ See Farrell Fritz Letter; CCMC Letter; D. Burton Letter; and ABA FR of Sec. Comm. Letter.

¹⁵⁷ See ABA FR of Sec. Comm. Letter.

¹⁵⁸ See IRS, Statistics of Income Division, Partnerships, May 2019, Table 8, available at <https://www.irs.gov/pub/irs-soi/17pa08.xlsx>. See also D. Burton Letter.

¹⁵⁹ Rule 501(a)(9).

equivalents.¹⁶⁰ By using an existing definition, the Commission indicated that it hoped to alleviate confusion and facilitate compliance.

i. Comments

Many commenters supported adding a catch-all category for entities to the definition.¹⁶¹ No commenter specifically objected, although one commenter indicated that it opposed including governmental bodies and Indian tribes in the catch-all category because entities funded by taxpayers should not be given accredited investor status when “[t]axpayers themselves would not likely qualify under existing restrictions.”¹⁶² A few commenters suggested that the Commission clarify the types of entities to be included in the catch-all category,¹⁶³ with two commenters suggesting specific enumerated lists that include Indian tribes and their various instrumentalities.¹⁶⁴ To maintain flexibility and to allow for new entity types to be included within the accredited investor definition, another commenter suggested that the Commission describe in the text of the release the types of entities to be included instead of enumerating entity

types in the rule.¹⁶⁵ One commenter suggested that the Commission use the term “person,” as defined in Section 2(a)(2) of the Securities Act instead of “entity,” in order to clarify that governmental funds would be included in this new category.¹⁶⁶

The Proposing Release requested comment on whether any restrictions should be applied with respect to entities covered by proposed Rule 501(a)(9), such as restrictions on entities organized or incorporated under the laws of a foreign country. Two commenters responded that they did not support restrictions,¹⁶⁷ one of whom noted that international investment should not be discouraged.¹⁶⁸ In addition, two commenters noted that Indian tribes are not foreign governments or countries.¹⁶⁹

Regarding the use of an investments test for this category of institutional investors, the Proposing Release sought comment on several topics. The Commission requested comment on whether an investments test or an asset test was appropriate. A few commenters supported an asset test over an investments test,¹⁷⁰ noting that an asset test is already used in the accredited investor definition. One commenter supported an investment test, noting

that an investment test “demonstrates that an entity has sufficient investment experience and financial sophistication,”¹⁷¹ and a few other commenters supported either test.¹⁷² The Commission also requested comment on whether \$5 million in investments is the appropriate threshold. A few commenters stated that \$5 million is an appropriate threshold,¹⁷³ while one commenter supported a \$10 million threshold.¹⁷⁴ One commenter took no position on a threshold but noted that it did not support a “substantial increase” in the amount proposed,¹⁷⁵ and no commenters indicated support for a lower threshold.

The Commission also requested comment on whether using the definition of investments from Rule 2a51-1(b) under the Investment Company Act was appropriate. A few commenters stated that using the definition from Rule 2a51-1(b) was appropriate,¹⁷⁶ while a few commenters indicated it was not.¹⁷⁷ Two commenters noted that the use of the terms “Prospective Qualified Purchaser” and “qualified purchaser” in the definition of investments has the

¹⁶⁰ See Rule 2a51-1(b), which was adopted by the Commission in Privately Offered Investment Companies, Release No. IC-22597 (Apr. 3, 1997) [62 FR 17512 (April 9, 1997)].

¹⁶¹ See letter from California Municipal Treasurers Association Legislative Committee dated Feb. 12, 2020 (“CMTA Letter”); letter from Arnold Porter Kaye Scholer LLP dated Feb. 14, 2020 (“Arnold & Porter Letter”); letter from National Association of State Treasurers et al. dated Feb. 27, 2020 (“NAST et al. Letter”); A. Hemmingsen Letter; letter from Southern Ute Indian Tribe dated Mar. 3, 2020 (“Southern Ute Letter”); NAFOA Letter; ICI Letter; TIAA Letter (stating that the Commission should “clarify in its final rule that the phrase “governmental bodies” should be construed broadly to include a comprehensive range of state, territorial, and local governmental entities, as well as U.S. government agencies and departments, sovereign governments recognized by the United States and sovereign investment funds, and funds, pools, and endowments established by U.S. federal, state, and local governments for a specified purpose and subject to control by a government officer, board, or similar body”); NASAA Letter; letter from PFM Asset Management LLC dated Mar. 16, 2020 (“PFM Letter”); MFA and AIMA Letter; Better Markets Letter; SIFMA Letter; CCMC Letter; SBIA Letter; letter from California Association of County Treasurers and Tax Collectors dated Feb. 14, 2020 (“CACTTC Letter”); Artinvest Letter; and ABA FR of Sec. Comm. Letter.

¹⁶² See letter from Vulcan Consultants, LLC dated Feb. 17, 2020 (“Vulcan Letter”) (stating that “adding to the risk profile in hopes of increased returns only serves to encourage government entities to keep more taxpayer funds in city hall rather than returning them to their rightful owner—the taxpayer”).

¹⁶³ See Arnold & Porter Letter; ICI Letter; PFM Letter; Southern Ute Letter; and NAFOA Letter.

¹⁶⁴ See Southern Ute Letter and NAFOA Letter.

¹⁶⁵ See Arnold & Porter Letter (suggesting the following list: “State, Commonwealth or Territory of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and any county or subdivision thereof; ‘Municipal government entity’ as that term is defined in Section 15B(8) of the Securities Exchange Act of 1934 and regulations thereunder, including, without limitation, a state government, county government or city government; United States government branch, agency, department or unit; Federal or state-recognized tribe within the United States; Foreign sovereign government recognized by the United States government; Multi-lateral agency such as those listed in 17 CFR 230.902(k)(2)(vi); Subdivision, department, agency, bureau or other formally-constituted body of a municipal government entity, United States federal government entity, or foreign sovereign entity that is recognized by the United States; Sovereign investment fund; or Fund, pool or endowment, established by a federal, state, local, tribal or foreign government pursuant to a Constitution, statute, regulation, executive order, or treaty, for a specified use or purpose, subject to oversight and control by a government officer, board or similar governing body with the powers to contract and to litigate”).

¹⁶⁶ See letter from Oregon State Treasury dated Mar. 16, 2020 (“OST Letter”) (recommending the use of Section 2(a)(2)’s “person” because it “is not wholly clear whether all state and local governmental funds are completely separate ‘entities’ in a legal sense”). In the alternative, this commenter suggested that “unincorporated organization, or governmental or political subdivision thereof” be added after “entity.”

¹⁶⁷ See Arnold & Porter Letter and D. Burton Letter.

¹⁶⁸ See D. Burton Letter.

¹⁶⁹ See NAFOA Letter and Southern Ute Letter.

¹⁷⁰ See Southern Ute Letter; MFA and AIMA Letter; and D. Burton Letter.

¹⁷¹ See Artinvest Letter (noting that “[w]e agree with the Commission’s view, with respect to the \$5 million catch-all for entities described above, that an investment test is appropriate as it demonstrates that an entity has sufficient investment experience and financial sophistication to automatically qualify as an accredited investor”).

¹⁷² See Arnold & Porter Letter (stating that “[i]n the case of governmental entities, the test (whether investments or assets) should include investment (or assets) of related governmental entities if either: (a) They are consolidated into the same financial reporting unit for governmental accounting standards; or (b) they are managed by the same office or officer of the broader government of which they are a part”) and NAFOA Letter.

¹⁷³ See Arnold & Porter Letter; NAFOA Letter; and Artinvest Letter.

¹⁷⁴ See NASAA Letter.

¹⁷⁵ See Southern Ute Letter (noting that the “Tribe does not take a position on whether \$5 million in investments or assets is the appropriate threshold, although it would not support a substantial increase in the threshold”).

¹⁷⁶ See P. Rutledge Letter (noting that the use of the term “gives certainty as to what assets held by the entity qualify for purposes of being deemed an accredited investor”) and A. Hemmingsen Letter (stating that “[a]n important feature of Rule 2a51-1(b) is its inclusion of binding capital commitments. This inclusion is an important facilitator for funds structured as draw down vehicles”).

¹⁷⁷ See Southern Ute Letter (noting that “the definition of ‘investments’ from Section 270.2a51-1 currently applies in the context of establishing status as a ‘qualified purchaser’ under the [Investment Company Act],” which “complicates the application of this definition to a determination of ‘accredited investor’ status . . .”) and D. Burton Letter (noting that “[u]sing assets [instead of investments] as defined by generally accepted accounting principles would eliminate most ambiguity”).

potential to confuse.¹⁷⁸ Given the presence of the qualified-purchaser-specific terminology in the definition of “investments,” these commenters sought clarification on the use of the term “investments” in the accredited investor context.

ii. Final Amendments

We are adopting the amendment as proposed. Consistent with the support of many commenters, we are adopting the amendment to add a new category to the accredited investor definition that includes any entity owning “investments,” as that term is defined in Rule 2a51-1(b) under the Investment Company Act, in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered.¹⁷⁹ While we agree with some commenters that clarification of the types of entities included in the new category is warranted, we do not believe that enumerating a list of entities in the rule is necessary. Instead, we reiterate that the intent of this new category is to capture all entity types not already included in the definition of accredited investor as well as those entity types that may be created in the future. We believe the term “entity” is sufficiently broad in this context to encompass Indian tribes and the divisions and instrumentalities thereof, federal, state, territorial, and local government bodies, funds of the types identified by commenters, and entities organized or under the laws of foreign countries.

We do not agree with commenters who suggested substituting an asset test for the investment test. We continue to believe that requiring more than \$5 million in investments instead of assets for this catch-all category of entities may better demonstrate that the investor has experience in investing and is therefore more likely to have a level of financial sophistication similar to that of other institutional accredited investors. Certain types of entities covered by the amendment, such as governmental entities, may have more than \$5 million in non-financial assets such as land, buildings, and vehicles, but not have any investment experience. We continue to believe that an investments test may be more likely than an assets-based test to serve as a reliable method for ascertaining whether an entity is likely to require the protections of Securities Act registration. We also believe that \$5 million in investments is an appropriate threshold that demonstrates the investor’s experience in investing. Although one commenter

suggested a \$10 million threshold, we are not persuaded that setting the threshold at double the amount applicable under the assets test for other institutional accredited investors is warranted in order to illustrate a similar level of financial sophistication.

We are applying the definition of investments from Rule 2a51-1(b) under the Investment Company Act to Rule 501(a)(9), as proposed. We believe that the use of an existing definition will facilitate compliance and alleviate confusion. We do not believe that additional guidance is necessary to enable market participants to apply this definition in the accredited investor context, notwithstanding the use of the terms “Prospective Qualified Purchaser” and “qualified purchaser” in the definition of “investments.”

e. Certain Family Offices and Family Clients

In the Proposing Release, the Commission proposed to add new categories to the accredited investor definition for certain “family offices” and “family clients of family offices.” “Family offices” are entities established by families to manage their assets, plan for their families’ financial future, and provide other services to family members. The Commission has previously observed that single family offices generally serve families with at least \$100 million or more of investable assets.¹⁸⁰ Family offices generally meet the definition of “investment adviser” under the Advisers Act, as the Commission has interpreted the term, because, among the variety of services provided, family offices are in the business of providing advice about securities for compensation. However, the Commission adopted the “family office rule”¹⁸¹ in 2011 to exclude single family offices from regulation under the Advisers Act under certain conditions.¹⁸² Under that rule, a family office generally is a company that has no clients other than “family clients.”¹⁸³ “Family clients” generally

¹⁸⁰ See Family Offices, Release No. IA-3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)] (“Family Office Proposing Release”). See also Proposing Release at note 158.

¹⁸¹ 17 CFR 275.202(a)(11)(G)-1.

¹⁸² See Family Offices, Release No. IA-3220 (June 22, 2011) [76 FR 37983 (June 29, 2011)] (“Family Office Adopting Release”). See also Family Office Proposing Release (“We viewed the typical single family office as not the sort of arrangement that Congress designed the Advisers Act to regulate. We also were concerned that application of the Advisers Act would intrude on the privacy of family members. . . . The Act was not designed to regulate the interactions of family members in the management of their own wealth”).

¹⁸³ A family office also (1) must be wholly owned by family clients and exclusively controlled

are family members, former family members, and certain key employees of the family office, as well as certain of their charitable organizations, trusts, and other types of entities.¹⁸⁴

In the Proposing Release, the Commission proposed that for a family office to qualify as an accredited investor, it would need to have more than \$5 million in assets under management and its investments would need to be directed by a person who has such knowledge and experience in financial and business matters that such family office would be capable of evaluating the merits and risks of the prospective investment.

i. Comments

Commenters generally supported the proposed amendments to the definition of accredited investor to include any “family office” with more than \$5 million in assets under management,¹⁸⁵ and no commenters opposed the amendments. One commenter noted that under the current regulatory scheme, depending on their organizational structure, many family offices are already able to meet the definition of an accredited investor, and establishing a clear standard would allow family offices to manage family assets more prudently and make issuers more comfortable working with family office investors.¹⁸⁶

Several commenters supported the proposed requirement that qualifying family offices have more than \$5 million in assets under management.¹⁸⁷ While

(directly or indirectly) by one or more family members or family entities (each as defined in the rule), and (2) must not hold itself out to the public as an investment adviser. See Rule 202(a)(11)(G)-1(b) under the Advisers Act.

¹⁸⁴ For a full list of family clients, see 17 CFR 275.202(a)(11)(G)-1(d)(4). The family office rule defines a “family member” to include “all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another family member became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants’ spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.” 17 CFR 275.202(a)(11)(G)-1(d)(6).

¹⁸⁵ See J. LaBerge Letter; M. Trudeau Letter; SBIA Letter; ILPA Letter; CCMC Letter; Carta Letter; AIC Letter; PIC Letter; Artivist Letter. One commenter also recommended that the Commission provide an exemption from the definition of “investment company” under the Investment Company Act for family offices and their family clients. See PIC Letter. This rulemaking is intended to amend the definition of accredited investor under the Securities Act. Accordingly, the suggested exemption from the definition of investment company is beyond the scope of this rulemaking.

¹⁸⁶ See M. Trudeau Letter. See also PIC Letter.

¹⁸⁷ See J. LaBerge Letter; M. Trudeau Letter; A. Hemmingsen Letter (noting it would be appropriate

Continued

¹⁷⁸ See Southern Ute Letter and NAFOA Letter.

¹⁷⁹ Rule 501(a)(9).

no commenters disagreed with the proposal to require that family offices have a minimum amount of assets under management, one commenter proposed increasing the minimum to \$10 million.¹⁸⁸ The commenter stated that this higher threshold would be more likely to capture investors who can reasonably be expected to have the sophistication and ability to withstand economic losses as to enable them to fend for themselves.

Commenters generally supported the requirement that the family office's prospective investments be directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment,¹⁸⁹ noting that the underlying premise of the amendments is that family offices and their professionals have the knowledge, experience and sophistication to apply to investment decisions, even though a family client may not.¹⁹⁰

On the other hand, one commenter opposed the inclusion of the knowledge and experience requirement under proposed Rule 501(a)(12)(iii).¹⁹¹ The commenter suggested that the Commission should instead require an issuer to obtain a written representation that the purchaser qualifies as a family office under Rule 202(a)(11)(G)-1 under the Advisers Act and, at the time of the purchase, meets all of the requirements of that rule.

Nearly all commenters that addressed the issue were supportive of including in the definition of accredited investor family clients of a family office that meets the proposed requirements of Rule 501(a)(12).¹⁹² One of these commenters expressed support for allowing a family client to “piggyback” on the sophistication of the family office for purposes of meeting the accredited investor requirement as long as the family office is involved in the

to impose a financial threshold for a family office to qualify as an accredited investor as proposed); Carta Letter; PIC Letter; Artinvest Letter; and ILPA Letter.

¹⁸⁸ See NASAA Letter.

¹⁸⁹ See M. Trudeau Letter (adding a sophistication requirement for family office managers is integral to the rationale of the accredited investor definition); ILPA Letter; and PIC Letter.

¹⁹⁰ See PIC Letter. The commenter also noted structural similarities of this requirement with the trust category in accredited investor definition in Rule 501(a)(7) of the Securities Act that requires that the purchase of a trust be directed by a sophisticated person as described in Rule 506(b)(2)(ii).

¹⁹¹ See P. Rutledge Letter.

¹⁹² See ILPA Letter; J. LaBerge Letter; CCMC Letter; Carta Letter; P. Rutledge Letter; AIC Letter; PIC Letter; and Artinvest Letter.

investment decision-making process for the particular investment in question.¹⁹³ One commenter opposed including in the accredited investor definition family clients of a family office meeting the proposed requirements of Rule 501(a)(12).¹⁹⁴ The commenter raised investor protection concerns and stated that including family clients in the definition would reduce what it means to be a sophisticated investor to a test of familial relationships.

The Proposing Release also requested comment on whether a person who receives assets upon the death of a family member (or other involuntary transfer from a family member) (“a beneficiary”) should qualify as an accredited investor during the year following such involuntary transfer if the beneficiary would not otherwise qualify.¹⁹⁵ One commenter expressly supported this approach, noting that it would be consistent with the family office rule.¹⁹⁶ The commenter also stated that carving out such a “beneficiary” from the accredited investor definition could potentially prevent or complicate the orderly liquidation or transition of the beneficiary from its status as a family client.

ii. Final Amendments

We are adopting, substantially as proposed, amendments to the definition of accredited investor to include certain family offices and their family clients. The definition encompasses a “family office” as defined in the “family office rule”¹⁹⁷ that meets the following additional requirements: (i) It has more than \$5 million in assets under management,¹⁹⁸ (ii) it is not formed for the specific purpose of acquiring the securities offered,¹⁹⁹ and (iii) its

¹⁹³ See PIC Letter (expressing the view that the family client should not meet the accredited investor definition unless the family client relies on the family office for investment support with respect to the investment in question).

¹⁹⁴ See M. Trudeau Letter.

¹⁹⁵ The family office rule deems a person who receives assets upon the death of family member (or other involuntary transfer from a family member) to be a family client for one year following the involuntary transfer. See Rule 202(a)(11)(G)-1(b) under the Advisers Act.

¹⁹⁶ See PIC Letter.

¹⁹⁷ 17 CFR 275.202(a)(11)(G)-1. One commenter suggested that we emphasize that Rule 501(a)(12) does not apply to multi-family offices. See M. Trudeau Letter. Rule 501(a)(12) directly references the definition of “family office” under the family office rule, and as such, the amendments apply only to family offices that meet this definition and do not apply to multi-family offices. See also Family Office Adopting Release (noting that the family office exclusion does not extend to family offices serving multiple families).

¹⁹⁸ Rule 501(a)(12)(i).

¹⁹⁹ Rule 501(a)(12)(ii).

prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.²⁰⁰ The final amendments to the definition of accredited investor also include “family clients” (as defined in the family office rule) of a family office that meets the requirements stated above, whose prospective investment in the issuer is directed by such family office.²⁰¹

We believe the policy rationale for adopting the family office rule also supports the adoption of these amendments to the definition of accredited investor for family offices and their family clients. We continue to believe that family offices and their family clients can sustain the risk of loss of investment, given their assets.²⁰² We also continue to believe that certain protections otherwise afforded to less financially sophisticated investors by federal securities laws are not necessary to protect family offices or their clients. Finally, while one commenter raised concerns that including family clients in the accredited investor definition reduces what it means to be a sophisticated investor to a test of familial relationships, we believe these concerns are mitigated by the requirements of the definition. In particular, to qualify as an accredited investor, a person must be a family client of a family office meeting the requirements of Rule 501(a)(12), including that the family office has more than \$5 million in assets under management and its investments are directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.

After considering comments, the amendment will require a family office to have more than \$5 million in assets under management as proposed. We believe a \$5 million threshold, and not a \$10 million threshold as suggested by one commenter, is the appropriate level to ensure the family office has sufficient assets to sustain the risk of loss. We believe the \$5 million threshold sufficiently captures investors who can reasonably be expected to have financial sophistication and the ability to

²⁰⁰ Rule 501(a)(12)(iii).

²⁰¹ Rule 501(a)(13). A family client will not qualify as an accredited investor under Rule 501(a)(13) with respect to a prospective investment if the family client's prospective investment is not directed by a family office meeting all the requirements of Rule 501(a)(12).

²⁰² See Proposing Release at 2589.

withstand economic losses and fend for themselves. This threshold also is consistent with the asset threshold required by other accredited investor categories.²⁰³

In addition, as proposed, the amendment will require that the family office's purchase be directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment. This requirement is designed to ensure that the person directing the investments of the family office is able to evaluate the risks and take steps to protect the interests of family clients, particularly with respect to family clients who do not on their own meet the definition of an accredited investor.²⁰⁴ This requirement is similar to the financial sophistication requirement for trusts to meet the definition of an accredited investor under Rule 501(a)(7) under the Securities Act, and we do not believe that determining that the family office or family client meets the relevant definition will create an undue burden for issuers.²⁰⁵

Finally, after considering comments, we are not excluding from the accredited investor definition a beneficiary that temporarily qualifies as a family client under the family office rule. That is, a person who receives assets upon the death of a family member or key employee (or other involuntary transfer from a family member or key employee) will qualify as a family client for purposes of the accredited investor definition for one year. We do not believe it is appropriate to differentiate family clients within the definition and agree with commenters that excluding a beneficiary from the accredited investor definition could negatively impact the family office's management and transition of the beneficiary from its status as a family client.²⁰⁶

²⁰³ Rule 501(a)(1), (a)(3), and (a)(7).

²⁰⁴ Additionally, the amendments require family clients to invest through a family office that meets the requirements of Rule 501(a)(12) to qualify as an accredited investor.

²⁰⁵ An issuer could, for example, obtain a representation that the family office meets the requirement of Rule 501(a)(12)(iii) as part of a traditional investor questionnaire.

²⁰⁶ A person is determined to be an accredited investor at the time of investment, so a beneficiary would not be required to unwind any holdings acquired through an involuntary transfer from a family member (or made during the period that the beneficiary is a family client), but the beneficiary would not be able purchase additional holdings, unless the beneficiary qualifies as an accredited investor on another basis. See Rule 501(a).

3. Permitting Spousal Equivalents To Pool Finances for the Purposes of Qualifying as Accredited Investors

In the Proposing Release, the Commission proposed to allow natural persons to include joint income from spousal equivalents when calculating joint income under Rule 501(a)(6), and to include spousal equivalents when determining net worth under Rule 501(a)(5). The proposed amendments would define spousal equivalent as a cohabitant occupying a relationship generally equivalent to that of a spouse. The Commission previously has used this formulation of spousal equivalent. As discussed above, a family office is exempted from regulation under the Advisers Act when the family office advises "family clients."²⁰⁷ The Commission defined "family clients" to include "family members," of which "spousal equivalents" are a part, with "spousal equivalent" defined as a cohabitant occupying a relationship generally equivalent to that of a spouse.²⁰⁸ The crowdfunding rules adopted to implement the requirements of Title III of the Jumpstart Our Business Startups Act ("JOBS Act") also use this definition of "spousal equivalent."²⁰⁹ In Regulation Crowdfunding, the Commission included the term "spousal equivalent" in the definition of the term "member of the family of the purchaser or the equivalent," with "spousal equivalent" having the same definition used in the Advisers Act and as the one we proposed to use in Rule 501(a).²¹⁰

a. Comments

Several commenters supported adding spousal equivalents,²¹¹ with one commenter noting that adding spousal equivalents may allow more investment opportunities for investors.²¹² A few

²⁰⁷ See Family Office Adopting Release.

²⁰⁸ Rule 202(a)(11)(G)–1(d)(9).

²⁰⁹ Public Law 112–106, 126 Stat. 306 (2012). The JOBS Act provides that securities issued in reliance on the crowdfunding exemption may not be transferred by the purchaser for one year after the date of purchase, except when transferred to, among other persons, "a member of the family of the purchaser or the equivalent" (emphasis added). See JOBS Act Section 302(e)(1)(D). In addition, though the Commission rule governing accountant independence also includes "spousal equivalents," the term is not defined in that rule. See 17 CFR 210.2–01.

²¹⁰ 17 CFR 227.501(c).

²¹¹ See letter from Sean Mortensen dated Dec. 18, 2019 ("S. Mortensen Letter"); P. Rutledge Letter; letter from Daniel Hoeller dated Feb. 19, 2020 ("D. Hoeller Letter"); J. LaBerge Letter; A. Hemmingsen Letter; CCMC Letter; NASAA Letter; SBIA Letter; Mercer Advisors Letter; S. Moller Letter; Better Markets Letter; M. Trudeau Letter; and Artivist Letter.

²¹² See D. Hoeller Letter (positing that the amendment "would help . . . thousands more to

commenters did not support adding spousal equivalents,²¹³ with one commenter opposed to the addition because of potential tax consequences,²¹⁴ and another suggesting a different definition limited solely to "legally-recognized relationships besides marriage."²¹⁵

b. Final Amendments

We are adopting the amendment as proposed for the reasons noted in the Proposing Release. We continue to believe that there is no need to deviate from the definition of "spousal equivalent" already used in Commission rules. Revising Rule 501(a)(5) and (6) to permit spousal equivalents to pool their financial resources will promote consistency with these existing rules. By contrast, using a different, more limited definition, as suggested by one commenter, would add complexity to our rules without an obvious benefit in terms of investor protection.

4. Notes to 501(a)

The Commission proposed to amend the accredited investor definition to incorporate three long-standing staff interpretations. The first is the inclusion of limited liability companies in Rule 501(a)(3), which is discussed in Section II.B.2.c above. The second relates to the term "joint" in Rule 501(a)(5), and the third relates to the identity of the owners of entities seeking accreditation under Rule 501(a)(8).

a. Note to Rule 501(a)(5)

The Commission proposed to add a note to Rule 501 to clarify that the calculation of "joint net worth" for purposes of Rule 501(a)(5) can be the aggregate net worth of an investor and his or her spouse (or spousal equivalent if "spousal equivalent" is included in Rule 501(a)(5)), and that the securities being purchased by an investor relying on the joint net worth test of Rule 501(a)(5) need not be purchased jointly.

access potentially better investment opportunities").

²¹³ See Md St. Bar Assn. Comm. on Sec. Laws Letter (recommending a different definition) and Cornell Sec. Clinic Letter.

²¹⁴ See Cornell Sec. Clinic Letter (positing that the addition "might encourage tax shifting because individuals who are taxed separately could be taxed less than a married couple due to different tax brackets between the two taxable units").

²¹⁵ See Md St. Bar Assn. Comm. on Sec. Laws Letter (recommending that the definition be limited "solely to persons in other legally-recognized relationships besides marriage, including domestic partnerships and civil unions, that provide legal rights to the participants in such an arrangement that are similar to those accorded to legal spouses (at least with respect to financial matters)").

The Commission noted that nothing in previous Regulation D releases indicates that the Commission intended the term “joint” in Rule 501(a)(5) to require (1) joint ownership of assets when calculating the net worth of the spouses, or (2) that an investor relying on the joint net worth test acquire the security jointly instead of separately. The Commission also noted that allowing spouses to own assets in various forms for the purposes of the net worth test is consistent with how the Commission treats spousal ownership of assets in other contexts.²¹⁶

i. Comments

Every commenter that addressed this amendment supported it,²¹⁷ with one commenter noting that the addition “may help some investors and practitioners to better understand the rules.”²¹⁸

ii. Final Amendments

We are adopting the amendment as proposed. We continue to believe that it does not appear necessary in the accredited investor context to limit how an investor takes title to securities or how spouses or spousal equivalents own assets.

b. Note to Rule 501(a)(8)

Under Rule 501(a)(8), an entity qualifies as an accredited investor if all of the equity owners of that entity are accredited investors. Because in some instances, an equity owner of an entity is another entity, not a natural person, the Commission proposed to add a note to Rule 501(a)(8) that would clarify that, in determining accredited investor status under Rule 501(a)(8), one may look through various forms of equity ownership to natural persons. Thus, if those natural persons are themselves accredited investors, and if all other equity owners of the entity are accredited investors, the entity would be an accredited investor under Rule 501(a)(8). The Commission noted its belief that this approach is appropriate because the intent of Rule 501(a)(8) is to qualify as accredited investors those entities that are 100% owned by accredited investors and, for this purpose, it should not matter whether the ownership is direct or indirect.

²¹⁶ See Rule 2a51–1 under the Investment Company Act, which permits separate ownership, joint ownership, and community property ownership.

²¹⁷ See P. Rutledge Letter; Mercer Advisors Letter; CCMC Letter; D. Burton Letter; and ABA FR of Sec. Comm. Letter.

²¹⁸ See D. Burton Letter.

i. Comments

Several commenters supported adding the note as written,²¹⁹ while two commenters supported the note but with modifications, positing that the proposed note would have a disproportionate impact on Indian tribes and other entities because tribes may use limited liability companies and other entities to make investments, with the tribes, not individual natural persons, as the owner of the entity.²²⁰

ii. Final Amendments

We are adopting the amendment as proposed. We do not share the commenters’ concerns that the note, as drafted, would disproportionately disadvantage Indian tribes and other entities. The purpose of the amendment is to clarify that it is appropriate to look through various forms of ownership under Rule 501(a)(8) to natural persons in those cases where an equity owner of an entity is itself an entity, but that owner-entity does not qualify on its own merits as an accredited investor (e.g., if the owner-entity is an LLC that does not meet the \$5 assets test). This clarification does not supersede the application of Rule 501(a)(8) to entities; therefore, for example, if an Indian tribe or state forms and is the sole equity owner of an LLC, such LLC could qualify as an accredited investor either if it meets the requirements of Rule 501(a)(3), or if the Indian tribe or state equity-owner meets the requirements of Rule 501(a)(9).

5. Amendment to Rule 215

The Commission proposed to amend the accredited investor definition in Rule 215 to conform to the amendments to the accredited investor definition in Rule 501(a). Rule 215 defines the term “accredited investor” under Section 2(a)(15) of the Securities Act²²¹ for

²¹⁹ See P. Rutledge Letter; Arnold & Porter Letter (would also add a related note stating that “one may look through the various forms of ownership and control of a governmental entity to the overarching government of which a specific governmental entity is a part when determining accredited investor status under Rule 501(a)(9)”; NAFOA Letter; CCMC Letter; NASAA Letter; and D. Burton Letter.

²²⁰ See Southern Ute Letter (stating that “[t]he Tribe regularly invests and conducts business through state-organized limited liability companies and other entities, and the proposed rule that allows a look through only to natural persons would disadvantage the Tribe and other Indian tribes”) and NAFOA Letter (stating that “[s]ince Indian tribes would be included as an accredited investor[, the Commission] should add the generic “entities” to the “natural persons” to read “natural persons or entities” to avoid disadvantaging Indian tribes”).

²²¹ 15 U.S.C. 77b(a)(15). Section 2(a)(15) of the Securities Act sets forth an enumerated list of entities that qualify as accredited investors as well as “any person who, on the basis of such factors as

purposes of Section 4(a)(5) of the Securities Act.²²² The accredited investor definition in Rule 215 has historically been substantially consistent but not identical to the accredited investor definition in Rule 501(a) of Regulation D. For example, in contrast to the definition in Rule 501(a), the scope of the accredited investor definition in Rule 215 does not include banks, insurance companies, registered investment companies, business development companies as defined in Section 2(a)(48) of the Investment Company Act, or SBICs. In addition, the accredited investor definition in Rule 215 does not contain a reasonable belief standard as in Rule 501(a).²²³

To ensure uniformity in the accredited investor definition in both provisions, the Commission proposed to replace the existing definition in Rule 215 with a cross reference to the accredited investor definition in Rule 501(a). By including this cross reference, the definition of “accredited investor” in Rule 215 as amended would be expanded to include any amendments to the accredited investor definition in Rule 501(a), as well as those entities that are presently included in the definition in Rule 501(a) but not the definition in Rule 215. As amended, the definition would also contain the same reasonable belief standard as in Rule 501(a).

a. Comments

All of the commenters responding to this proposed amendment supported its adoption.²²⁴ The Proposing Release also requested comment on whether amending the scope of the accredited investor definition in Rule 215 as proposed would raise concerns regarding the application of the Section 4(a)(5) exemption. No commenters

financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.”

²²² 15 U.S.C. 77d(a)(5). Section 4(a)(5) of the Securities Act provides an exemption for issuers for the offer and sale of securities to accredited investors if the aggregate offering amount does not exceed \$5 million; the issuer, or anyone acting on its behalf, does not engage in general solicitation or general advertising; and the issuer files a notice on Form D with the Commission. Based on DERA staff’s review of Form D filings from January 1, 2009 through December 31, 2019, no issuer reported relying on the Section 4(a)(5) exemption during that time period.

²²³ Under Rule 501(a), natural persons and entities that come within any of eight enumerated categories in the definition, or that the issuer reasonably believes comes within any of the categories, are accredited investors.

²²⁴ See P. Rutledge Letter; Arnold & Porter Letter; CCMC Letter; Republic Letter; D. Burton Letter; and ABA FR of Sec. Comm. Letter.

indicated that the amendment would raise concerns about Section 4(a)(5), while one commenter expressly stated that it did not believe that Section 4(a)(5) would be affected.²²⁵ The Commission also requested comment on whether adding a reasonable belief standard to the definition in Rule 215 would raise concerns. No commenters indicated that adding a reasonable belief standard raised concerns, while two commenters expressly stated that no concerns would exist.²²⁶

b. Final Amendments

We are adopting the amendment as proposed. We continue to believe that the historical intended consistency between Rules 215 and 501(a) should be maintained, and we agree with the commenter that replacing the definition in Rule 215 with a cross-reference to Rule 501(a) would simplify compliance.²²⁷

6. Other Comments

The Proposing Release also requested comment on other topics related to the accredited investor definition but not the subject of specific proposals, including whether the Commission should adjust the financial thresholds for inflation, whether the Commission should include geographic-specific financial thresholds, and whether investors advised by a registered investment adviser or a registered broker-dealer should be included as accredited investors.

a. Adjustments to Financial Thresholds

With respect to inflation adjustment, comments were mixed. Several commenters expressed support for maintaining the thresholds as they are,²²⁸ with one commenter suggesting that raising the thresholds would adversely affect certain real estate investors²²⁹ and another commenter suggesting that certain manufacturing investors would be adversely affected.²³⁰

²²⁵ See Arnold & Porter Letter.

²²⁶ See Arnold & Porter Letter and D. Burton Letter.

²²⁷ See Arnold & Porter Letter.

²²⁸ See IPA Letter; Morningstar Letter; Md St. Bar Assn. Comm. on Sec. Laws Letter; CCMC Letter; NAM Letter; Republic Letter; AIC Letter; D. Burton Letter (this commenter also believes that the threshold could “possibly” be reduced); and Geraci Letter and AAPL Letter.

²²⁹ See IPA Letter (noting that raising the thresholds could affect the ability of some to accomplish like-kind exchanges under Section 1031 of the Internal Revenue Code).

²³⁰ See NAM Letter (positing that “[i]ncreasing the income or net worth tests would reclassify many manufacturing investors as non-accredited, disrupting the businesses that already rely on their investment capital and reducing capital formation

A number of commenters supported raising the thresholds to reflect inflation either since adoption of the rule, on a going-forward basis, or both.²³¹ One commenter noted that unadjusted thresholds have lowered the level of sophistication required for accredited investor status over time;²³² while several other commenters posited that investor protections have been weakened over time.²³³ A few commenters supported lowering the financial thresholds,²³⁴ with one commenter positing that changes in the availability of information since the adoption of the accredited investor definition reduced the efficacy of the financial thresholds in identifying sophisticated investors.²³⁵

opportunities for manufacturers on a going forward basis”).

²³¹ See letter from George Humm dated Jan. 29, 2020 (“G. Humm Letter”); letter from Howard Lichtman dated Feb. 21, 2020 (“H. Lichtman Letter”); letter from Marc. I. Steinberg dated Jan. 23, 2020; B. Delaplaine Letter; M. L. Letter; ICI Letter; S. Moller Letter; St. John’s Sec. Arbitration Clinic Letter; NASAA Letter; Better Markets Letter; CA Attorney General et al. Letter; M. Trudeau Letter; MFA and AIMA Letter; Cornell Sec. Clinic Letter; R. Maud Letter; PIABA Letter (suggesting that the Commission “rais[e] the net worth threshold to \$2.5 million and income threshold to \$500,000/\$750,000 for individuals and couples”); letter from Tyler Yagman and Nicholas Bruno dated Mar. 15, 2020; and Artivest Letter. See also SBCFAC Recommendations (recommending that the Commission “[g]oing forward, index the financial thresholds for inflation on periodic basis”) and IAC Recommendations (recommending that the Commission consider “whether financial thresholds need to be adjusted for inflation”).

²³² See B. Delaplaine Letter.

²³³ See ICI Letter (stating that “changes in technology that have occurred since 1982 do not make up for the loss of investor protection as a result of the erosion of the financial thresholds”); S. Moller Letter (stating that “adjustment is not only definitively warranted but essential for the protection of investors”); St. John’s Sec. Arbitration Clinic Letter (stating that “the SEC’s purpose in setting those monetary requirements in 1982 is undermined as inflation increases and yet the thresholds remain the same”); M. Trudeau Letter (positing that the thresholds should be raised to “get back to the original intent of the category”); PIABA Letter (stating that raising the thresholds would “be a meaningful step forward in moving back to the original intention of limiting the pool of accredited investors”); and Better Markets Letter (stating that “there may indeed now [be] hundreds of thousands of investors who have become qualified as Accredited Investor solely on the virtue of inflation of their asset prices but who otherwise lack necessary financial sophistication to carefully weigh the risks associated in investing in exempt offerings”).

²³⁴ See letter from Stuart dated Dec. 19, 2019; letter from Max Harker dated Dec. 19, 2019 (“M. Harker Letter”); letter from Robert Hall dated Feb. 23, 2020 (“R. Hall Letter”); and B. Andrews et al. Letter (stating that “[t]he current income and wealth standards that determine who can participate in private capital markets shut out even many ‘wealthy’ Americans from investing in founders from their communities”).

²³⁵ See R. Hall Letter (noting that “[w]e are in an age of information where plenty of performance data is available for your average citizen to make intelligent investments in small companies”).

The Proposing Release also requested comment on whether certain assets or liabilities should be excluded from or included in the calculation of net worth under Rule 501(a)(5). A few commenters responded that home equity should be included as an asset;²³⁶ another commenter proposed to exclude “agricultural land and machinery held for production;”²³⁷ and a few commenters proposed to exclude the value of certain retirement accounts.²³⁸ One commenter suggested that the net worth calculation be based on “documented liquid net worth.”²³⁹ Another commenter did not believe changes were necessary.²⁴⁰

After considering these comments, we continue to believe that it is not necessary or appropriate to modify the definition’s financial thresholds at this time. As stated in the Proposing Release, we believe that in evaluating the effectiveness of the current thresholds, it is appropriate to consider changes beyond the impact of inflation, such as changes over the years in the availability of information and advances in technologies. Information about many issuers and other participants in the exempt markets is more readily available now to a wide range of market participants, which was not the case at the time the accredited investor definition was adopted. In addition, we continue to believe that (1) at an individual level, removing investors from the current pool, particularly those who have participated, or are currently participating, in the private placement market would be inappropriate on various grounds, including the imposition of costs and principles of fairness more generally and (2) at a more general level, a significant reduction in the accredited investor pool through an increase in the definition’s financial thresholds could have disruptive effects on certain aspects of the Regulation D

²³⁶ See J. Evans Letter and B. Andrews et al. Letter (stating that “[a]lthough there are over 600,000+ Black people that have a \$1M net worth in the US; with most of that net worth in personal residences, Dodd Frank excludes them from meeting the [accredited investor] rule”).

²³⁷ See NASAA Letter.

²³⁸ See NASAA Letter (recommending exclusion of “the value of any defined benefit or defined contribution tax-deferred retirement accounts”) and D. Kui Letter (recommending exclusion of a portion of the investor’s “retirement accounts” and suggesting that the Commission could “(i) [set] forth a maximum amount of money from a retirement account which can be included in the calculation of net worth, (ii) [use] a discount or likewise formula to proportionately include the money from a retirement account into the calculation of net worth, and (iii) set a maximum amount that an investor may invest by fund from his/her retirement account”).

²³⁹ See Mercer Advisors Letter.

²⁴⁰ See D. Burton Letter.

market.²⁴¹ For example, a sharp decrease in the accredited investor pool may result in a higher cost of capital for certain companies, particularly companies in regions of the country with lower venture capital activity who may rely on “angel” or other individual investors as a primary source of funding, as well as for regions of the country with relatively lower wages and net worth.²⁴²

We remain mindful of investor protection concerns raised by the wealth tests. Notwithstanding the assertions of some commenters, we are not persuaded that the investor protections provided by the financial thresholds have been meaningfully weakened over time due to inflation. Although it may be argued that an investor with an income of \$200,000 or a net worth of \$1 million now is not as “wealthy” as such an investor would have been in 1982, we do not believe that this correlates to a lower level of financial sophistication. It is not clear what specific factors the Commission took into account in 1982 when it established the individual income and net worth thresholds. Further, we note that in 1982, the calculation of net worth included the value of the primary residence, but in 2011, the Commission amended the net worth standard to exclude the value of the investor’s primary residence.²⁴³

In the Proposing Release the Commission noted that it was not “aware of widespread problems or abuses associated with Regulation D offerings to accredited investors that would indicate that an immediate and/or significant adjustment to the rule’s financial thresholds is warranted.”²⁴⁴ The Commission requested comment in the Proposing Release on whether there is evidence that any fraud in the private

²⁴¹ See Proposing Release at 2594. Substantially increasing the thresholds to reflect, for example, the effect of inflation since they were adopted, would reduce significantly the number of individuals that currently qualify as accredited investors under those tests. Such an increase would reduce the percentage of qualifying households from approximately 13.0% today to approximately 4.2%.

²⁴² See, e.g., Laura Lindsey & Luke C.D. Stein, *Angels, Entrepreneurship, and Employment Dynamics: Evidence from Investor Accreditation Rules* (Working Paper, 2019) (examining the effects of changes in angel financing stemming from the 2011 amendment to the accredited investor definition required by the Dodd-Frank Act, which excluded an investor’s primary residence in determining an accredited investor’s net worth and finding as the pool of potential accredited investors was reduced, there was an increase in negative effects to firm entry, reduced employment levels at small entrants, and a decline in relative wages for the startup sector).

²⁴³ Net Worth Standard for Accredited Investors, Release No. 33-9287 (Dec. 21, 2011) [76 FR .81793 (Dec. 29, 2011)].

²⁴⁴ See Proposing Release at 2594.

markets is driven or affected by the levels at which the accredited investor definition is set, or that maintaining the current financial thresholds would place investors at a greater risk of fraud. We also asked whether there is any quantitative data available that shows an increased incidence of fraud in particular types of exempt offerings or in the market for exempt offerings as a whole. One commenter responded with references to various Commission enforcement actions involving private offerings,²⁴⁵ and another commenter responded that “evidence strongly suggests that private markets are highly risky and are fertile environments for fraud.”²⁴⁶ However, commenters did not provide information that would indicate that any such incidents of fraud in the private markets are driven or affected by the levels at which the accredited investor definition is set.

We do not believe the financial thresholds need to be adjusted at this time. The Commission will continue to monitor the size of the accredited investor pool, the characteristics of individual accredited investors who participate in the private markets, the appropriateness of the income and net worth thresholds, and, to the extent data is available, performance and incidence of fraud in exempt offerings, including in connection with the Commission’s quadrennial review of the accredited investor definition required by the Dodd-Frank Act.²⁴⁷

b. Geography-Specific Thresholds

A few commenters expressed support for geography-specific financial thresholds,²⁴⁸ noting that incomes vary throughout the country. The SBCFAC Recommendations proposed to “possibly adjust [the financial thresholds] downwards for certain regions of the country.”²⁴⁹ The SEC Small Business Forum Report proposed to “[r]evis[e] the dollar amounts to scale for geography, lowering the thresholds in states/regions with a lower cost of living.”²⁵⁰ A few commenters were opposed to geography-specific financial

²⁴⁵ See NASAA Letter (also noting that “private offerings are often characterized by opaque disclosures, related party transactions, illiquidity, minimal financial information and, unfortunately, fraud”).

²⁴⁶ See CA Attorney General et al. Letter (also referencing NASAA’s Enforcement Reports for 2013–15 and referencing statements on the Commission’s *Investor.gov* website and Division of Enforcement’s Annual Report for 2018).

²⁴⁷ See *supra* note 110.

²⁴⁸ See D. Kui Letter (noting that “income levels largely vary among different regions in the United States”) and K. Pulavarthi Letter.

²⁴⁹ See *supra* note 18.

²⁵⁰ See *supra* note 19.

thresholds,²⁵¹ with one commenter highlighting that it would add complexity to the accredited investor definition²⁵² and another commenter noting that it would add administrative complexity for issuers,²⁵³ which could ultimately result in a higher cost of capital. Although we acknowledge that geographical income and wealth disparities may lead to bunching of accredited investors in large coastal cities, we believe the complexities that geography-specific financial thresholds would create for issuers and investors do not weigh in favor of adding such geography-specific financial thresholds to the accredited investor definition at this time. Further, we believe the new accredited investor criteria we are adopting today may help mitigate the disparate geographic effects of the current wealth-based criteria by including non-wealth-based alternative criteria for natural persons to qualify under the definition. The Commission will have the opportunity to further consider this issue in connection with its quadrennial reviews of the accredited investor definition.

c. Advised by Third Parties

Regarding whether the Commission should permit an investor advised by a registered investment adviser or broker-dealer to be deemed an accredited investor, many commenters expressed support,²⁵⁴ with a number of these commenters positing that the client would be able to rely on the knowledge and the sophistication of the adviser to determine whether an investment is appropriate.²⁵⁵ One commenter stated

²⁵¹ See CFA Letter and D. Burton Letter.

²⁵² See D. Burton Letter.

²⁵³ See CFA Letter (noting that “[g]iven the challenge small issuers can face in verifying accredited investor status, the Commission should avoid over-complicating the calculation, particularly with so little evidence that a problem exists that merits this adjustment”).

²⁵⁴ See SAF Financial Letter; C. Lakumb Letter; letter from Brian Schreiner dated Feb. 20, 2020; letter from Robert R. Champion dated Jan. 15, 2020; letter from Seth Haymes dated Dec. 29, 2019; letter from Dolan McEniry Capital Management, LLC dated Mar. 9, 2020; IPA Letter; ALTI Letter; letter from GW&K Investment Management, LLC dated Mar. 16, 2020 (“GW&K Letter”); letter from iCapital Network dated Mar. 16, 2020; Fidelity Letter; Artvest Letter; letter from GTS Securities LLC dated May 5, 2020; and M. Harker Letter (suggesting that investors advised by funding portals be included).

²⁵⁵ See Fidelity Letter (indicating that “[a] retail investor who does not qualify as an accredited investor and yet would like to access private offering opportunities should be able to work with, and rely on, the knowledge and sophistication that registered investment advisers and broker-dealers have in determining whether such an investment is appropriate for the investor, as analyzed under the appropriate standard of conduct”) and IPA Letter (noting that the adviser acts as a fiduciary for the client).

that the idea could merit consideration in the future once the market gains some experience under Regulation Best Interest.²⁵⁶ Another commenter suggested the use of the purchaser representative concept of Regulation D as a possible means of permitting advised investors to participate in exempt offerings.²⁵⁷ Commenters that supported treating clients of financial intermediaries as accredited investors did not offer additional conditions or protections that should be considered as part of this expansion.²⁵⁸

Several commenters were opposed,²⁵⁹ with one stating that such an amendment would expand the definition of accredited investor without ensuring that adequate protections exist that would make the protections of the securities laws unnecessary.²⁶⁰ Another commenter posited that such an expansion would negate the investor protections provided by the accredited investor definition and generally shift capital formation efforts from the public markets to the private markets.²⁶¹ One commenter predicted that only intermediaries with conflicts of interest would participate and argued that the supposed expertise of a financial intermediary is no substitute for the investor's own sophistication, experience, and wherewithal.²⁶²

²⁵⁶ See ABA FR of Sec. Comm. Letter (noting that "this idea may merit further consideration after there has been some experience with Regulation Best Interest and with the rule amendments (once adopted) proposed here").

²⁵⁷ See D. Burton Letter (positing that "[f]leshing out the purchaser representative concept [of Regulation D] seems to me to be a more fruitful path forward than treating advised investors as accredited").

²⁵⁸ See, e.g., Fidelity Letter (stating "we do not believe that additional limits would be necessary should the SEC permit this expansion").

²⁵⁹ See J. LaBerge Letter; A. Hemmingsen Letter; CFA Letter; Mercer Advisors Letter; St. John's Sec. Arbitration Clinic Letter; ICI Letter (noting that "even if a financial intermediary has the sophistication to make informed decisions about private market offerings, that alone would not satisfy the Commission's longstanding policy of considering retail investors' access to resources to bear loss from products that lack Securities Act protections"); NASAA Letter; CA Attorney General et al. Letter; and PIABA Letter.

²⁶⁰ See St. John's Sec. Arbitration Clinic Letter.

²⁶¹ See CA Attorney General et al. Letter (stating that "broker-dealers and investment advisors often have conflicts of interest in their relationships with individual investors . . . data suggests that broker-dealers who market securities in private offerings are more likely to be the subject of complaints to FINRA . . . [and] this expansion of accredited investor status is likely to swallow the general rule that private placements are limited to a select pool of accredited investors").

²⁶² See NASAA Letter (indicating that "[r]esponsible, reputable investment advisers will be unlikely to recommend private offerings to clients unless they are already sophisticated and wealthy enough to qualify as accredited. The only investment advisers who would do so are those

Finally, one commenter stated that expanding the definition of accredited investor to clients of financial intermediaries raises concerns about economies of scale and adverse selection.²⁶³

After considering the comments received, we are not expanding the accredited investor definition to include customers of a broker-dealer or clients of a registered investment adviser. We believe that neither a recommendation by a broker-dealer nor advice by a registered investment adviser should serve as a proxy for an individual investor's financial sophistication or his or her ability to sustain the risk of loss of investment or ability to fend for him or herself. Additionally, we are concerned that allowing investors receiving recommendations or investment advice to be considered accredited investors, regardless of their financial sophistication, experience, or ability to bear loss, could undermine the purpose of the accredited investor definition in identifying investors who possess a sufficient level of financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act and our framework for regulating the offering process.

Furthermore, as the Commission noted in the Proposing Release, being advised by a financial professional has historically not been a complete substitute for the protections of the Securities Act registration requirements and, if applicable, the Investment Company Act.²⁶⁴ The presence of a financial intermediary may not solve for certain of the investment protection concerns associated with private offerings, such as illiquidity, agency costs (including bargaining power in contracting when the investor has less money to invest), information asymmetry, as well as high transaction and search costs. For the reasons discussed above, we are not expanding the accredited investor definition to include investors advised by a

whose business models are conflicted in favor of private issuers. Further, a review of suitability cases brought by NASAA members, [FINRA], and in private FINRA arbitrations reveals that conflicted investment advice is not uncommon").

²⁶³ See, e.g., ICI Letter (stating "[w]hile larger retail or institutional investors with research staffs and large pools of capital can access the more attractive investment opportunities and negotiate pricing and access to information, smaller retail investors and their financial intermediaries only may be able to access less-attractive opportunities. In addition, it is possible that at least some intermediaries will not have the expertise to properly evaluate those investments").

²⁶⁴ See Proposing Release at 2595.

registered investment adviser or broker-dealer.

d. Other Comments Received

Several commenters responded with ideas that were not responses to specific requests for comment. A few commenters proposed a multi-level accreditation system for natural persons²⁶⁵ allowing investors at a lower level of income or net worth²⁶⁶ to invest either a capped amount²⁶⁷ or invest through an investor group.²⁶⁸ Another commenter proposed an "investments assets" test for natural persons with \$1 million in investments.²⁶⁹ One commenter proposed to remove the requirement that any institutional investor not be formed for the purposes of investing in the offered securities.²⁷⁰ Other commenters suggested changes related to the financial thresholds, with one commenter suggesting that accredited-investor status be maintained for life,²⁷¹ and another suggesting that accredited-investor status should not need to be re-evaluated often.²⁷² One commenter suggested that "sophisticated investors" be allowed to invest in Rule 506(c) offerings.²⁷³ A few commenters suggested changes related to how defined contribution employee benefit plans count beneficial owners for the purposes of compliance with the Investment Company Act.²⁷⁴ Some commenters proposed to eliminate the accredited investor definition,²⁷⁵ with one of these commenters recommending that the definition be replaced with an online acknowledgement-of-risk form²⁷⁶ and another recommending

²⁶⁵ See J. Kelner Letter; Cityvest Letter; and T. Parker Letter.

²⁶⁶ See J. Kelner Letter (did not specify thresholds); Cityvest Letter (\$100,000 in annual income or \$500,000 in net worth); and T. Parker Letter (\$100,000 in annual income or \$500,000 in net worth).

²⁶⁷ See J. Kelner Letter (\$25,000 or \$50,000) and Cityvest Letter (\$50,000).

²⁶⁸ See T. Parker Letter (proposing to allow investors to "invest in deals through an established Angel Group that provides education and possibly also a more experienced mentor").

²⁶⁹ See G. Fryer Letter.

²⁷⁰ See CCMC Letter.

²⁷¹ See G. Hodge Letter.

²⁷² See K. Pulavarthi Letter.

²⁷³ See R. Courtney Letter.

²⁷⁴ See letters from Institute for Portfolio Alternatives dated July 10, 2020 and from Defined Contribution Alternatives Association dated July 20, 2020. These commenters also recommended changes to Rule 22e-4 under the Investment Company Act.

²⁷⁵ See *supra* note 16.

²⁷⁶ See K. Wilson Letter (stating that "[a]cknowledging risks could be as simple as having a person go through an online survey, providing a written verification or clicking an acceptance of terms that a person understands the risks, no matter what their level of net worth is").

elimination of the distinction between accredited and non-accredited investors in Regulation D offerings.²⁷⁷

After considering these comments, we do not believe additional amendments to the definition of accredited investor are warranted at this time. Nor are we eliminating the accredited investor definition. We believe that the amendments we are adopting in this release provide appropriate investor protections while facilitating capital formation. The Commission will have the opportunity to consider these and other matters in connection with its quadrennial review of the accredited investor definition required by the Dodd-Frank Act.²⁷⁸

III. Amendments to Securities Act Rule 163B and Exchange Act Rule 15g-1

A. Securities Act Rule 163B

In registered offerings under the Securities Act, issuers may engage in test-the-waters communications with qualified institutional buyers or institutional accredited investors to gauge their interest in a contemplated offering. Under Section 5(d) of the Securities Act, an emerging growth company, as defined in Securities Act Rule 405,²⁷⁹ is permitted to engage in oral or written communications with potential investors that are either qualified institutional buyers, as defined in Rule 144A(a)(1), or institutions that are accredited investors as defined in Rule 501(a), to offer securities before or after the filing of a registration statement.

In September 2019, the Commission adopted Securities Act Rule 163B, which extends this testing-the-waters accommodation to all issuers.²⁸⁰ Pursuant to Rule 163B, an issuer may engage in test-the-waters communications with potential investors that are, or that the issuer or person authorized to act on its behalf reasonably believes are, qualified institutional buyers, as defined in Rule 144A, or institutions that are accredited investors, as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8).

In connection with the amendments to the accredited investor definition in Rule 501(a), the Commission also proposed to amend Rule 163B to include a reference to proposed Rules

501(a)(9) and (a)(12). The proposed amendment was intended to maintain consistency between Rule 163B and Section 5(d), in that institutional accredited investors under proposed Rules 501(a)(9) and (a)(12) would automatically fall within the scope of Section 5(d).

1. Comments

The Proposing Release requested comment on whether Rule 163B should be amended to include a reference to Rules 501(a)(9) and (a)(12). Three commenters responded, with two commenters supporting inclusion of a reference to Rule 501(a)(9) and (a)(12).²⁸¹ The other commenter supported including a reference only to Rule 501(a)(9), and indicated that he had no view on whether to include 501(a)(12).²⁸² The Commission also requested comment on whether the proposed amendments to the accredited investor definition and the qualified institutional buyer definition raise concerns in connection with the test-the-waters communications that issuers may engage in pursuant to Rule 163B or Section 5(d) of the Securities Act. One commenter responded that the proposed amendments would raise no concerns.²⁸³

2. Final Amendments

We are adopting the amendment as proposed with one addition. We continue to believe that expanding the types of entities with whom an issuer may engage in test-the-waters communications, by amending the accredited investor definition and the qualified institutional buyer definition,²⁸⁴ may increase the use of Rule 163B, as well as Section 5(d), and may result in issuers more effectively gauging market interest in contemplated registered offerings. We also continue to believe that the expanded scope of entities that would receive test-the-waters communications under the proposed amendment to Rule 163B have the financial sophistication to process this information and to review the registration statement that is filed with the Commission against the test-the-waters materials before making an investment decision.

Accordingly, we are amending Rule 163B to include references to Rules 501(a)(9) and (a)(12). We are also including a reference to Rule 501(a)(13)

to cover family clients that are institutions and qualify as accredited investors under such rule. As noted above, the definition of “family client” includes both natural persons and institutions. Section 5(d) of the Securities Act refers to “institutions that are accredited investors,” and, unlike Rule 163B, does not specify particular paragraphs of Rule 501(a) that refer to such institutions. As the intent in proposing to amend Rule 163B was to maintain consistency between Rule 163B and Section 5(d) of the Securities Act and capture institutions that are able to newly qualify as accredited investors, we believe including family clients that are institutions in the list of institutional accredited investors is appropriate.

B. Exchange Act Rule 15g-1

The Proposing Release also proposed to amend Rule 15g-1(b) to include a reference to proposed Rules 501(a)(9) and (a)(12).²⁸⁵ Pursuant to Exchange Act Rule 15g-2 through Rule 15g-6, broker-dealers are required to disclose certain specified information to their customers prior to effecting a transaction in a “penny stock,” as defined in 17 CFR 240.3a51-1 under the Exchange Act.²⁸⁶ Rule 15g-1 under the Exchange Act exempts certain transactions from these disclosure requirements. In particular, paragraph (b) of Rule 15g-1 exempts transactions in which the customer is an institutional accredited investor, as defined in Rule 501(a)(1), (2), (3), (7), or (8) of Regulation D.²⁸⁷

1. Comments

The Proposing Release requested comment on whether Rule 15g-1(b) should be amended to include a reference to Rules 501(a)(9) and (a)(12). A few commenters supported adding Rule 501(a)(9).²⁸⁸ No commenters responded on whether 501(a)(12) should be added, and no commenters indicated that neither should be added. The

²⁸⁵ We are also adopting a technical amendment to Rule 15g-1(c) to update the reference to Section 4(2) of the Securities Act to reflect the current numbering scheme in Section 4.

²⁸⁶ Rules 15g-1 through 15g-9 under the Exchange Act [17 CFR 240.15g-2 through 15g-9] are collectively known as the “penny stock rules.” See also Schedule 15G under the Exchange Act.

²⁸⁷ In addition, Rule 15g-1(a), (d), (e), and (f) exempt certain other transactions from the disclosure requirements in Rules 15g-2 through 15g-6. Rule 15g-1(c) exempts transactions that meet the requirements of Regulation D or that are exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2). Rule 15g-1 also includes a provision the Commission can use to exempt by order any other transactions or persons from the penny stock rules as consistent with the public interest and the protection of investors.

²⁸⁸ See P. Rutledge Letter and CCMC Letter.

²⁷⁷ See J. Peter Letter (stating “please treat all equal and let everyone invest in accredited deals”).

²⁷⁸ See *supra* note 110.

²⁷⁹ An emerging growth company is defined in Rule 405 as an issuer that had total annual gross revenues of less than \$1,070,000,000 during its most recently completed fiscal year.

²⁸⁰ See Solicitations of Interest Prior to a Registered Public Offering, Release No. 33-10699 (Sept. 25, 2019) [84 FR 53011 (Oct. 4, 2019)].

²⁸¹ See CCMC Letter and ABA FR of Sec. Comm. Letter.

²⁸² See D. Burton Letter.

²⁸³ *Id.*

²⁸⁴ The amendments to the qualified institutional buyer definition in Rule 144A are discussed below in Section IV.

Commission also requested comment on whether limited liability companies should continue to be included in the exemption set forth in Rule 15g-1(b). One commenter responded that limited liability companies should continue to be included.²⁸⁹

2. Final Amendments

We are adopting the amendment as proposed with one addition. We continue to believe that, like the institutional accredited investors currently within the scope of Rule 15g-1(b), those institutions that we are adding to the accredited investor definition in Rule 501(a)(1), entities owning investments in excess of \$5 million that are not formed for the specific purpose of acquiring the securities being offered, and family offices do not need the additional protections provided by Rules 15g-2 through 15g-6.²⁹⁰ We also continue to believe that, consistent with the categories of institutional accredited investors presently listed in Rule 15g-1(b), entities within the scope of Rule 501(a)(9), family offices, and the other types of entities we are adding to the accredited investor definition generally invest in speculative equity securities as part of an overall investment plan, have a good understanding of the risks of investing in penny stocks, and have the ability to obtain and evaluate independent information regarding these stocks.²⁹¹

As discussed above in connection with the addition of institutional “family clients” to Rule 163B, we are also including institutional family clients in the list of institutional accredited investors in Rule 15g-1(b). We believe this addition is appropriate to capture institutions that are newly able to qualify as accredited investors and to prevent confusion that could arise if we do not maintain consistency in the references to institutional accredited investors across our rules.

IV. Discussion of the Final Amendments to the Qualified Institutional Buyer Definition

A. Proposed Amendments

Rule 144A(a)(1)(i) specifies the types of institutions that are eligible for

qualified institutional buyer status if they meet the \$100 million in securities owned and invested threshold.²⁹² The Commission proposed to expand the qualified institutional buyer definition by adding RBICs to Rule 144A(a)(1)(i)(C) and limited liability companies to Rule 144A(a)(1)(i)(H) to correspond to the proposed amendments to Rule 501(a)(1) and Rule 501(a)(3). In addition, to ensure that entities that qualify for accredited investor status also qualify for qualified institutional buyer status when they meet the \$100 million in securities owned and invested threshold in Rule 144A(a)(1)(i), the Commission proposed to add new paragraph (J) to Rule 144A(a)(1)(i). The proposed new paragraph would permit institutional accredited investors under Rule 501(a), of an entity type not already included in paragraphs 144A(a)(1)(i)(A) through (I) or 144A(a)(1)(ii) through (vi), to qualify as qualified institutional buyers when they satisfy the \$100 million threshold.²⁹³ This new category in the qualified institutional buyer definition would encompass the new category in the accredited investor definition for entities owning investments in excess of \$5 million that are not formed for the specific purpose of acquiring the securities being offered under Regulation D,²⁹⁴ as well as any other entities that may be added to the accredited investor definition in the future, although such entities would also have to meet the \$100 million threshold in order to be qualified institutional buyers under Rule 144A.

B. Final Amendments

1. Comments

Commenters generally supported expanding the definition of qualified institutional buyer in Rule 144A,²⁹⁵ with several specifically supporting the amendments to Rule 144A(a)(1)(i)(C),²⁹⁶ Rule 144A(a)(1)(i)(H),²⁹⁷ and Rule 144A(a)(1)(i)(J).²⁹⁸ No commenter

²⁹² Rule 144A(a)(1)(i)(A)–(G) and (I).

²⁹³ Because Rule 144A(a)(1)(i)(J) covers entities not included in paragraphs (A) through (I), a bank or other financial institution specified in those paragraphs would continue to be required to satisfy the net worth test in Rule 144A(a)(vi).

²⁹⁴ Rule 501(a)(9).

²⁹⁵ See Better Markets Letter; ICI Letter; Fidelity Letter; and letter from Corbyn Investment Management, Inc. dated Jul. 15, 2020 (“Corbyn Letter”).

²⁹⁶ See CCMC Letter and ABA FR of Sec. Comm. Letter.

²⁹⁷ See Arnold & Porter Letter; CCMC Letter; and ABA FR of Sec. Comm. Letter.

²⁹⁸ See letter from Matthew L. Clark, State Investment Officer South Dakota Investment Council dated Feb. 7, 2020 (“SD Investment Council Letter”); letter from Income Research + Management dated Feb. 13, 2020 (“IR+M Letter”) (positing that “permitting institutional accredited

opposed the proposed amendments to Rule 144A.

We also received comments from several commenters with specific support for including in the definition of qualified institutional buyer all state and local governments.²⁹⁹ A few commenters discussed the changing nature of the commercial paper markets in which they invest, with one commenter stating that “[w]ith the growth of the [Securities Act Section] 4(a)(2) and [Rule] 144A commercial paper markets and the recent trend of public corporations replacing exempt and registered securities programs with private placement programs, local governments face growing challenges to invest public funds for the benefit of our constituents.”³⁰⁰ Another commenter noted that, as a state government investor, it “can only purchase commercial paper issued under [Securities Act] Section 3(a)(3), which is relatively rare, compared to commercial paper issued under [Securities Act] Section 4(a)(2).”³⁰¹ Another commenter noted that changes have occurred in the Rule 144A market for bond offerings in the last 20 years, with more fixed income issuers opting to rely on the Rule 144A process for bond issuances, rather than going through the more expensive and burdensome public offering process.³⁰²

In the Proposing Release, the Commission noted that proposed Rule 144A(a)(1)(i)(J) would encompass bank-

investors that meet the asset threshold of \$100 million to be considered qualified institutional buyers under Rule 144A will allow for greater investment opportunities within the fixed income markets that are already afforded to other institutional investors of a similar nature”); CMTA Letter; Arnold & Porter Letter; J. LaBerge Letter; PIC Letter; ICI Letter; Am. Bankers Assn. Letter; OST Letter; TIAA Letter; CCMC Letter; Fidelity Letter; PFM Letter; letter from Coalition of Collective Investment Trusts dated Mar. 16, 2020 (“CCIT Letter”); Better Markets Letter; CACTTC Letter; and ABA FR of Sec. Comm. Letter.

²⁹⁹ See SD Investment Council Letter (indicating that “[s]tate governmental entities have the expertise to evaluate the 144A securities and make prudent investments in these securities”); letter from Amundi Pioneer Institutional Asset Management, Inc. dated Feb. 12, 2020 (“Amundi Pioneer Letter”); NAST et al. Letter; letter from David C. Damschen, Utah State Treasurer dated Feb. 26, 2020 (“Utah State Treasurer Letter”) (stating that “[o]ur investments would be greatly advantaged through increased diversification and marginally enhanced yield by expanding the pool of available securities to include corporate bonds and commercial paper available only to QIBs”); TIAA Letter; and Arnold & Porter Letter (positing that “[a]llowing governmental entities that meet the investment size threshold to qualify as QIBs would increase such entities’ flexibility in their investments without posing an increased risk to the markets or investors”).

³⁰⁰ See CACTTC Letter.

³⁰¹ See Utah State Treasurer Letter.

³⁰² See IAA Letter.

²⁸⁹ See D. Burton Letter.

²⁹⁰ As discussed above, we are also amending a number of the existing categories in the accredited investor definition relating to institutional investors that fall within the scope of the exemption in Rule 15g-1(b).

²⁹¹ See Penny Stock Disclosure Rules, Release No. 34-29093 (Apr. 17, 1991) [56 FR 19165 (Apr. 25, 1991)] and Penny Stock Disclosure Rules, Release No. 34-30608 (Apr. 20, 1992) [57 FR 18004 (Apr. 28, 1992)].

maintained collective investment trusts that include as participants individual retirement accounts or H.R. 10 plans that are currently excluded from the qualified institutional buyer definition pursuant to Rule 144A(a)(1)(i)(F), so long as the collective investment trust satisfies the \$100 million threshold.³⁰³ A few commenters supported the addition of Rule 144A(a)(1)(i)(J) specifically because it would capture certain collective investment trusts.³⁰⁴ One of these commenters supported the addition of Rule 144A(a)(1)(i)(J) because it would allow “bank-maintained [collective investment trusts and common trust funds] to qualify as qualified institutional buyer[s] if they satisfy the other requirements of Rule 144A.”³⁰⁵

The Proposing Release also requested comment on whether certain types of entities are less likely to have experience in the private resale market for restricted securities and may have more need for the protections afforded by the Securities Act registration provisions. The only commenter responding to this request for comment stated that it was not aware of any such entities.³⁰⁶ The Proposing Release also requested comment on whether the proposed amendments to the qualified institutional buyer definition would result in a greater likelihood of restricted securities sold under Rule 144A flowing into the public market. All of the commenters responding to this request indicated that they did not foresee such a likelihood.³⁰⁷

We received comments proposing additional expansions to Rule 144A. One commenter requested that the Commission include family clients in addition to family offices, which could be included under proposed Rule 144A(a)(1)(i)(J).³⁰⁸ One commenter proposed adding private funds with \$100 million in gross asset value and investment advisers managing the investments of such a private fund.³⁰⁹ A few commenters proposed to include clients of any SEC-registered adviser that manages more than \$100 million in securities.³¹⁰ Another commenter proposed to allow SEC-registered investment advisers to purchase 144A

securities for clients that are not qualified institutional buyers.³¹¹

2. Final Amendments

We are adopting the amendments as proposed and are adding a note in response to comments. We continue to believe that the \$100 million threshold for these entities to qualify for qualified institutional buyer status should ensure that these entities have sufficient financial sophistication and access to resources to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. The scope of Rule 144A(a)(1)(i)(J) encompasses all entity types that are not already listed in paragraphs (a)(1)(i)(A) through (I) or paragraphs (a)(1)(ii) through (vi) of Rule 144A, including Indian tribes, governmental bodies, and bank-maintained collective investment trusts. We also believe that the inclusion of Indian tribes and governmental bodies will provide these entities with expanded access to the commercial paper markets, which, according to the commenters discussed above, have changed in recent years.

Regarding the requests from commenters to expand Rule 144A to include various persons, including “family clients,” private funds with \$100 million in gross asset value and their investment advisers, clients of SEC-registered advisers that manage more than \$100 million in securities, and clients of any SEC-registered investment advisers, at this time, we are not expanding the scope of Rule 144A further than what the Commission proposed in the Proposing Release.

We are not expanding the definition to include private funds with \$100 million in gross asset value as one commenter suggested. Although we acknowledge that such funds likely have a high level of financial sophistication, we do not believe it is appropriate to add a new financial threshold to the definition exclusively for private funds. We are concerned about the application of different thresholds to similarly situated investors. We are also concerned about the confusion this would create. Furthermore, we believe that most private funds with \$100 million in gross asset value will already meet the definition of a qualified institutional buyer under Rule 144A (a)(1)(i)(H) or Rule 144A(a)(1)(i)(J).

We also are not expanding the definition to include clients of SEC-registered advisers. As discussed above with respect to the accredited investor

definition, being advised by a financial professional has historically not been a complete substitute for the protections of the Securities Act registration requirements and, if applicable, the Investment Company Act.³¹² We do not believe it is appropriate to effectively transfer the status of an adviser to its individual clients, or to expand the aggregation of investments managed by an adviser in order to permit such persons to qualify as qualified institutional buyers. We do note, however, that, if such a person is an institutional accredited investor, then it could also qualify as a qualified institutional buyer under Rule 144A(a)(1)(i)(J) if it meets the requirements of Rule 144A(a)(1)(i).³¹³

One commenter noted that the addition of Rule 144A(a)(1)(i)(J) would import the “not formed for the specific purpose of acquiring the securities offered” modifier of Rule 501(a) to several categories of institutional accredited investors that would qualify as qualified institutional buyers, a condition that does not appear at all in the current definition.³¹⁴ The provision in Rule 501(a) that the entity not be formed for the purpose of acquiring securities does not apply in the Rule 144A context. Consistent with the Proposing Release, we intend that eligible purchasers under Rule 144A(a)(1)(i) will continue to include entities formed solely for the purpose of acquiring restricted securities under Rule 144A, provided that they satisfy the test for qualified institutional buyer status.³¹⁵ To address the potential for confusion, we are adding a note to Rule 144A(a)(1)(i)(J) to clarify that the entity seeking qualified institutional buyer status under Rule 144A(a)(1)(i)(J) may be formed for the purpose of acquiring the 144A securities being offered.

V. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect

³¹² See *supra* note 264.

³¹³ For example, a family client that is an institution and qualifies as an accredited investor under Rule 501(a) and meets the \$100 million in securities owned and invested threshold of Rule 144A(a)(1)(i), will qualify as a qualified institutional buyer.

³¹⁴ See CCMC Letter.

³¹⁵ See Proposing Release at 2598. This is in contrast to the amendment to the accredited investor definition in Rule 501(a)(3), which will continue to require that the entity not be formed for the specific purpose of acquiring the securities offered.

³⁰³ See Proposing Release at note 241.

³⁰⁴ See CCIT Letter and Am. Bankers Assn. Letter.

³⁰⁵ See Am. Bankers Assn. Letter.

³⁰⁶ See Utah State Treasurer Letter.

³⁰⁷ See SD Investment Council Letter; Arnold & Porter Letter; and Utah State Treasurer Letter.

³⁰⁸ See PIC Letter.

³⁰⁹ See AIC Letter.

³¹⁰ See IAA Letter; GW&K Letter; and Corby Letter.

³¹¹ See GW&K Letter.

without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as a “major rule,” as defined by 5 U.S.C. 804(2).

VI. Economic Analysis

We are attentive to the costs imposed by and the benefits obtained from the final amendments.³¹⁶ The discussion below addresses the potential economic effects of the final amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation. We also analyze the potential costs and benefits of reasonable alternatives to the amendments.

A. Introduction and Broad Economic Considerations

As discussed above, we are adopting amendments, generally as proposed, to the “accredited investor” definition in Rule 501(a) of Regulation D to, among other things: (1) Add new categories of natural persons that qualify as accredited investors based on certain professional certifications or designations or other credentials, or with respect to investments in a private fund, as a “knowledgeable employee” of the private fund; (2) add certain entity types to the current list of entities that qualify as accredited investors and a new category for any entity with “investments,” as defined in Rule 2a51–1(b) under the Investment Company Act, in excess of \$5 million and that was not formed for the specific purpose of investing in the securities offered; (3) add family offices with more than \$5 million in assets under management and their family clients to the definition; (4) add the term “spousal equivalent” to the definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors; and (5) codify certain staff interpretive positions that relate to the accredited investor definition. We also are adopting an amendment to the definition of “qualified institutional

³¹⁶ Section 2(b) [15 U.S.C. 77b(b)] and Section 3(f) [15 U.S.C. 78c(f)] of the Exchange Act directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) [15 U.S.C. 78w(a)(2)] of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

buyer” in Rule 144A to expand the list of entities that are eligible to qualify as qualified institutional buyers. The final amendments are designed to better align access to unregistered offerings with the financial sophistication required to assess an investment opportunity without the added investor protections that come with registration under the Securities Act.

Registration under the Securities Act is intended to provide certain investor protections, for example, by imposing procedural and substantive disclosure requirements that go significantly beyond general antifraud rules. These requirements are designed to mitigate certain information asymmetry and principal-agent problems that can arise when companies make public offerings of securities to investors, and also provide other investor protections, including, for example, a right of rescission under Section 12 of the Securities Act, if certain procedural requirements are not followed, and rights of action under Sections 11 and 12(a)(2) of the Securities Act, in the event of material misstatements or omissions that in certain cases do not require proof of intent or reliance. Registration also imposes various costs, such as compliance costs and the risk of issuers disclosing sensitive proprietary information to competitors. Although registration is the default under our rules, Congress and the Commission have long recognized that the investor protection benefits of registration may not be necessary or appropriate in various circumstances, including in light of the significant attendant fixed and variable costs of registration, and have provided exemptions for certain offerings based on various factors, including when the offerings are generally limited to individuals and entities that do not require the protection of registration. We note that issuers conducting larger offerings with broad investor participation continue to rely on our public markets to avail themselves of the various attendant benefits of being a public company. The final amendments adjust the categories of individuals and entities eligible for participation in certain exempt offerings in several areas by expanding the definitions of accredited investor and qualified institutional buyer to include additional individuals and institutions that the Commission believes have sufficient knowledge and expertise to participate in investment opportunities that do not come with the additional protections provided by registration under the Securities Act.

In 2019, the estimated amount of capital reported as being raised in

offerings under Regulation D was over \$1.5 trillion,³¹⁷ which was larger than the \$1.2 trillion raised in registered offerings.³¹⁸ As private capital markets have grown, the vast majority of the capital that has been raised in unregistered offerings under Regulation D has been through investment by accredited investors. For example, though securities sold in offerings conducted pursuant to Rule 506(b) are permitted to be purchased by up to 35 non-accredited investors who are sophisticated, we estimate that, from 2009 to 2019, only between 3.4% and 6.9% of the aggregate number of offerings conducted under Rule 506(b) included non-accredited investor purchasers.³¹⁹ Further, these non-

³¹⁷ See *infra* Table 4 in Section VI.B. Offerings under Regulation D include offerings under Rules 504, 506(b), and 506(c). DERA staff analysis is based on Form D filings from 2019. These estimates are based on the reported “total amount sold” at the time of the original filing—required within 15 days of the first sale—as well as any additional capital raised and reported in amended filings. The data likely underreport the actual amount sold due to two factors. First, underreporting could occur in all years because Regulation D filings can be made prior to the completion of the offering, and amendments to reflect additional amounts sold generally are not required if the offering is completed within one year and the amount sold does not exceed the original offering size by more than 10%. Second, Rule 503 requires the filing of a notice on Form D, but filing a Form D is not a condition to the availability of a Regulation D exemption. Hence, it is possible that some issuers do not file a Form D for offerings relying on Regulation D. Finally, in their annual amendments, some funds appear to report net asset values for total amount sold under the offering. Net asset values could reflect fund performance as well as new investment into, and redemptions from, the fund. For these reasons, based on Form D data, it is not possible to distinguish between the two impacts.

³¹⁸ We obtain data for issuers conducting registered offerings from SDC Platinum’s New Issues database. We select all public offerings conducted in the U.S. market during 2019, excluding IPOs and government/federal agency offerings. For this comparison, we consider follow-on equity offerings and debt offerings as more appropriate benchmarks for Regulation D offerings because the motivations for conducting an IPO extend beyond raising capital to meet company’s financial needs, such as considerations of pre-IPO owners’ diversification and liquidity needs, among others.

³¹⁹ This estimated range is based on DERA staff analysis of Form D data on initial Form D filing among all Rule 506(b) offerings from 2009 to 2019. In particular, the 3.4% estimate is based on offerings that report that at least one non-accredited investor already have invested in the offering as of the Form D filing and may represent a lower bound because it relies on available Form D filings, and because a final Form D upon the conclusion of an offering is not required to be filed. If we also include Rule 506(b) offerings on Form D that accept non-accredited investors but reported having zero non-accredited investors in the initial filing, the estimated percentage of offerings involving accredited investors during the 2009–2019 period is approximately 6.9%, which may be viewed as an upper bound estimate.

accredited investors in the aggregate likely accounted for a negligible amount of the capital raised in those offerings, and any impact was likely heavily weighted towards smaller offerings.³²⁰ These facts emphasize the prominent role our private markets play, and, as a result, accredited investors (particularly institutional accredited investors) play, in capital formation.³²¹

We anticipate that the final amendments may, in certain circumstances, reduce the costs of finding investors (*i.e.*, search costs) for issuers in private offerings, as well as reduce their transactions costs (*e.g.*, through a potentially lower cost of determining and verifying accredited investor status and a potentially lower level of intermediation) and cost of capital, thereby facilitating capital formation in those circumstances. In general, we expect these effects will be more meaningful for smaller private offerings than for larger private offerings.

The final amendments will also affect investors. Investors with specified attributes of financial sophistication who do not otherwise qualify as accredited investors will be able to participate in investment opportunities that historically generally have not been available to them, such as investments in issuers that are not Exchange Act reporting companies and offerings by certain private equity funds, venture capital (VC) funds, and hedge funds, which are frequently offered under Rule 506.³²² Additionally, accredited investors are not subject to investment limits in offerings made under Tier 2 of Regulation A. Thus, expanding the definition of accredited investor will permit additional investors to participate in Regulation A offerings at higher amounts. In addition, expanding the definition of qualified institutional buyer in the final rule will give certain institutional investors the opportunity to participate in the Rule 144A market,

thereby giving those investors access to an expanded set of investment opportunities.

As discussed in more detail below, the main anticipated benefit to investors from the final amendments is access to a broader investment opportunity set that can potentially improve the risk-return characteristics of their portfolios. However, we recognize that any potential gains in the efficiency of investors' portfolios from access to exempt offerings may be moderated by the lower levels of investor protection provided by these offerings as compared to registered offerings, and factors such as information asymmetry, illiquidity, and prevailing market practices (such as specific investor solicitation practices across different types of issuers) that nevertheless limit investors' opportunity set for private markets.

We generally expect the individuals and institutions that will become newly eligible accredited investors or qualified institutional buyers to have a level of financial sophistication that will enable them to assess both the opportunities and risks offered by private offerings. For example, for reasons discussed in more detail above,³²³ we think it is reasonable to believe that individuals that pass one or more of the Series 7, 65, and 82 exams, and meet the requirements to represent or advise others in connection with securities market transactions (including private securities offerings), have demonstrated a sufficient level of financial sophistication to be able to evaluate and participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act.

The final amendments could increase the size and alter the composition of the pool of accredited investors by providing additional measures of financial sophistication (*e.g.*, professional certifications for individuals and an investments-owned threshold for entities) to qualify for accredited investor status. If many of the individuals who qualify as accredited investors under the final amendments already meet the income and wealth thresholds in the current accredited investor definition, then the impact of the change on the pool of individuals that qualify as accredited investors could be limited. For entities, we anticipate that the impact of the amendments could be more significant, as we are amending the accredited investor definition to include a broad range of entities not previously covered under the definition. Because we

believe family offices have generally qualified as accredited investors under the existing definition, we expect that the effect of the amendments on them will be much smaller than on other entities.

Expanding the pool of accredited investors may have a positive impact on capital formation in certain circumstances, such as in offerings by issuers that are small, in development stages, or in geographic areas that currently have lower concentrations of accredited investors. Similarly, the final amendments to the qualified institutional buyer definition in Rule 144A will increase the number of entities that qualify for this status, thus improving the ability of issuers to raise capital in the institutional investor market, including by enhancing competition among investors in this market.³²⁴ Further, the final amendments will permit issuers to engage in test-the-waters communications in registered offerings with a larger set of investors as a result of changes to the scope of entities that qualify as institutional accredited investors and qualified institutional buyers, further facilitating capital formation.

Where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the amendments. In many cases, however, we are unable to quantify the economic effects because we lack the information necessary to derive a reasonable estimate. We have incorporated feedback provided by commenters in our analysis of the economic effects of the final amendments. However, as explained in more detail below, because we do not have, have not received, and, in certain cases, do not believe we can obtain data that may inform on certain economic effects, we are unable to quantify those effects. For example, we are unable to quantify the costs to issuers and investors of verifying an investor's accredited investor status and the potential capital raising and compliance cost savings that may arise from the amendments to the accredited investor definition. We further note that, even in cases where we have some data or have received some data regarding certain economic effects, the quantification of these effects is

³²⁰ For example, based on Form D filings during the period 2009–2019, the aggregate amount raised in offerings reporting participation by at least one non-accredited investor in their initial Form D filings was approximately 2.5% of the total aggregate amount raised in 506(b) offerings. Based on offerings reporting a non-zero amount of capital raised in their initial Form D filings, the median amount raised in offerings that included non-accredited investors was \$463,000, whereas the median amount raised in offerings with only accredited investors was approximately \$1,552,000.

³²¹ Individual accredited investors play an important role in certain aspects of the market, particularly for smaller, early stage issuers. However, they likely represent a much smaller portion of the overall investment in our private markets as a whole, including Regulation D, Rule 144A offerings, etc.

³²² See, *e.g.*, *infra* Table 2 in Section VI.B.

³²³ See *supra* Section II.B.1.a.

³²⁴ Although Rule 144A is a non-exclusive safe harbor for resale transactions, market participants have used Rule 144A since its adoption in 1990 to facilitate capital raising by issuers. See, *e.g.*, *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33–9415 (July 10, 2013) [78 FR 44771 (July 24, 2013)].

particularly challenging due to the number of assumptions that we would need to make to forecast how issuers and newly eligible (and potentially eligible) accredited investors and qualifying institutional buyers will respond to the final amendments, and how those responses will, in turn, affect the broader private and public securities markets.

Although many commenters supported expanding the accredited investor definition,³²⁵ some commenters raised a number of concerns with the proposed amendments and the analysis of their anticipated economic effects in the Proposing Release.³²⁶ We have considered those concerns and, in appropriate circumstances, have expanded our economic analysis to address those concerns.

The remainder of this economic analysis presents the baseline; anticipated benefits and costs from the final amendments; potential effects on efficiency, competition, and capital formation; and alternatives to the final amendments.

B. Baseline and Affected Parties

The main affected parties of the final amendments to the accredited investor definition will be investors and issuers. For example, certain entities that are currently not designated accredited

investors will become accredited investors under the final amendments and will be eligible to participate in an expanded array of private offerings. Correspondingly, current accredited investors may face greater competition from newly qualified accredited investors to participate in investment opportunities in this market. Similarly, we anticipate that certain issuers, such as issuers that are smaller or in early stages of development, will need to compete less intensively and may incur fewer costs to access accredited investors under the final amendments.

We do not have precise data on the number of individuals and entities that currently qualify as accredited investors. Rule 501(a) of Regulation D uses net worth and income as bright-line criteria to identify natural persons as accredited investors.³²⁷ Using data on household wealth from the Federal Reserve's Survey of Consumer Finances (SCF) database,³²⁸ we estimate that under the current income and wealth thresholds noted above, approximately 16.0 million U.S. households representing 13% of the total population of U.S. households, qualify as accredited investors. This estimate does not, however, identify the precise number of accredited investors that do or could invest in the Regulation D market or in other exempt offerings.³²⁹

Based on Form D filings during the period 2009–2019, we estimate that there were on average approximately 295,069 accredited investors participating annually in Regulation D offerings at the time of the initial filing.³³⁰ However, because an investor can participate in more than one Regulation D offering, this number likely includes duplicate investors and therefore represents an upper bound estimate. We lack data to estimate the actual number of unique accredited investors who participate annually in Regulation D offerings. Additionally, from the information reported on Form D, we cannot distinguish accredited investors that are natural persons from accredited investors that are institutions.³³¹ The average number of accredited investors per offering during the period 2009–2019 was 14, and the median number was four.

Table 2 presents evidence on investor participation in Regulation D offerings by industry type during the period 2009–2019. The participation of accredited investors in Regulation D offerings during that period varied by type of issuer as well, with offerings by real estate investment trusts (REITs) having the largest average number of accredited investors per offering, and those by operating companies having the smallest average number.

TABLE 2—INVESTORS PARTICIPATING IN REGULATION D OFFERINGS: 2009–2019

	Total number of investors *	Mean investors per offering	Median investors per offering	Fraction of offerings with one or more non-accredited investors ³³² (percent)	Fraction of offerings accepting non-accredited investors ³³³ (percent)
Hedge Fund	28,875	16	2	3	7
Private Equity Fund	28,062	17	2	2	3
Venture Capital Fund	11,809	15	4	0	1
Other Investment Fund	38,445	22	5	2	4
Financial Services	18,450	15	4	7	12
Real Estate	73,082	26	8	6	14
Non-financial Issuers	107,192	10	4	5	9

³²⁵ See *supra* note 14.

³²⁶ See *supra* note 15 for comment letters generally objecting to expanding the definition of accredited investor.

³²⁷ Under the current definition, individuals may qualify as accredited investors if (i) their net worth exceeds \$1 million (excluding the value of the investor's primary residence), (ii) their income exceeds \$200,000 in each of the two most recent years, or (iii) their joint income with a spouse exceeds \$300,000 in each of those years and the individual has a reasonable expectation of reaching the same income level in the current year.

³²⁸ See <https://www.federalreserve.gov/econresdata/scf/scfindex.htm>.

³²⁹ Form D data and other data available to us on private placements do not allow us to estimate the number of unique accredited investors that participate in exempt offerings.

³³⁰ We estimate the number of accredited investors as the number of total investors minus the number of non-accredited investors reported on initial Form D filings.

³³¹ Other limitations of the data gathered from Form D may reduce the accuracy of the estimated number of accredited investors. For example, an issuer is required to file a Form D generally no later than 15 calendar days after the first sale of securities in a Regulation D offering, regardless of whether the offering will be ongoing after the filing of the Form D. Further, issuers are required to file amendments to Form D only in limited circumstances: (i) To correct a material mistake of fact or error in a previously filed Form D, (ii) to reflect a change in certain information provided in a previously filed Form D, and (iii) on an annual basis if the offering is continuing at that time. Also, because the Form D filing requirement is not a

condition to claiming an exemption under Rule 506(b) or 506(c) but rather is a requirement of Regulation D, it is possible that some issuers do not file Form D when conducting Regulation D offerings.

³³² The estimated percentages are based on offerings that report that at least one non-accredited investor already invested in the offering as of the Form D filing and may represent a lower bound because it relies on available Form D filings, and because a final Form D upon the conclusion of an offering is not required to be filed.

³³³ The estimated percentages are based on offerings that indicate on their initial Form D filing that they accept non-accredited investors, whether or not they reported having non-accredited investors at the time of the initial filing.

TABLE 2—INVESTORS PARTICIPATING IN REGULATION D OFFERINGS: 2009–2019—Continued

	Total number of investors *	Mean investors per offering	Median investors per offering	Fraction of offerings with one or more non-accredited investors ³³² (percent)	Fraction of offerings accepting non-accredited investors ³³³ (percent)
All offerings	305,915	14	4	4	8

* 2009–2019 data is annualized.

We are not able to directly estimate the number of individuals who may newly qualify as accredited investors as a result of the initial set of professional certifications or designations, as precise data on the number of current holders of each professional certification or designation are not available to us. Based on data from FINRA, we estimate that there were 691,041 FINRA-registered individuals as of December 2018.³³⁴ We estimate that 334,860 individuals were registered only as broker-dealer representatives; 294,684 were dually registered as broker-dealer and investment adviser representatives; and 61,497 were registered only as investment adviser representatives. Assuming that all of these individuals represent separate households, and none are currently accredited investors, this would represent an approximately 4.3% increase in the number of households that qualify as accredited investors. However, many of these individuals may already qualify as accredited investors under the current financial thresholds. In addition, because many FINRA-registered representatives hold multiple professional certifications, this aggregation likely overstates the actual number of individuals that hold a Series 7 or Series 82, and we have no method of estimating the extent of overlap. Therefore, the number of FINRA-registered representatives provides an estimate of the upper bound of individuals that hold the relevant certifications and designations and will become newly eligible accredited investors under the final amendments. We do not have access to data to estimate how many of these registered representatives already qualify as accredited investors, and therefore we are unable to more precisely estimate how many individuals will be newly eligible under the final rules.

We are not able to directly estimate the number of knowledgeable employees at private funds that will be immediately affected by the final

amendments, as we do not have precise data on the number of such employees. Using data on private fund statistics compiled by the Commission’s Division of Investment Management, we estimate that there were 32,622 private funds as of third quarter 2019.³³⁵

Although we are unable to provide more precise estimates of how many individuals will become newly eligible accredited investors, and while the upper bound estimate is modest compared to the current pool of individuals that currently qualify as accredited investors (4%) and the population more generally (0.2%), we are confident that the final amendments will cause some modest increase in the number of individual accredited investors. However, largely due to the fact that newly eligible individual accredited investors would not have relatively significant income or wealth (otherwise, they would have qualified as accredited investors under the existing thresholds), it is unlikely that these newly eligible investors will provide an additional, meaningful source of capital in most private offerings.

Estimates for the number of family offices in the United States vary. In 2015, an industry participant estimated that there were 3,000 family offices in the United States.³³⁶ In 2017, academic researchers estimated the number of family offices in the United States to have been between 2,500 and 5,000.³³⁷ In 2019, an industry group estimated

³³⁵ See U.S. Securities and Exchange Commission, Division of Investment Management Third Quarter 2019 Private Fund Statistics, available at <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q3-accessible.pdf>.

³³⁶ See Robert Elliot, *Single family offices facing a transition*, Market Street Trust Company, (Dec. 2015), available at https://www.marketstreettrust.com/usr/PDF_Files/News/SFO_Transition_Final.pdf. A single family office generally provides services only to members of a single family.

³³⁷ See Elena Rivo-Lopez, Monica Villanueva-Villar, Alberto Vaquero-Garcia & Santiago Lago-Penas, *Family offices: What, why and what for*, *Organizational Dynamics* 46, 262–270, (2017), citing Family Office Exchange estimates.

that there are 10,489 family offices in the United States.³³⁸

When identifying entities as accredited investors, the current definition enumerates specific types of entities that will qualify. Certain enumerated entities are subject to a \$5 million asset threshold to qualify as accredited investors (e.g., tax-exempt charitable organizations, trusts, and employee benefit plans), while others are not (e.g., banks, insurance companies, registered broker-dealers, entities in which all equity owners are accredited investors, private business development companies, and SBICs). Many of the entities that are not subject to asset tests are regulated entities. An entity that is not covered specifically by one of the enumerated categories, such as an Indian tribe or sovereign wealth fund, is generally not an accredited investor under the current rule.

Publicly reported information provides an indication of the number of entities, by type, that may currently qualify as accredited investors. There were 3,670 broker-dealers that filed Financial and Operational Combined Uniform Single (“FOCUS”) reports with the Commission for 2019. As of 2019, there were 4,518 FDIC-insured banks, 659 savings and loan institutions,³³⁹ and 299 SBICs.³⁴⁰ There were 101 business development companies (BDCs) as of December 31, 2019. There were 5,965 insurance companies as of 2018.³⁴¹ With respect to the final amendments to the accredited investor definition to add other types of institutional accredited investors, as of December 2019 there were

³³⁸ See How Many Family Offices are there in the United States, available at <https://www.familyoffice.com/insights/how-many-family-offices-are-there-united-states>.

³³⁹ See FDIC Statistics at a Glance as of December 31, 2019, available at <https://www.fdic.gov/bank/statistical/stats/2019dec/industry.pdf>.

³⁴⁰ See Small Business Administration (SBA) SBIC Program Overview as of December 31, 2019, available at https://www.sba.gov/sites/default/files/2020-02/SBIC%20Quarterly%20Report%20as%20of%20December_31_2019.pdf.

³⁴¹ See Insurance Information Institute Industry Overview, available at <https://www.iii.org/fact-statistic/facts-statistics-industry-overview#Insurance>.

³³⁴ See 2019 FINRA Industry Snapshot, available at <https://www.finra.org/sites/default/files/2019%20Industry%20Snapshot.pdf>.

approximately 13,479 registered investment advisers,³⁴² 4,244 exempt reporting advisers,³⁴³ and 17,533 state-registered investment advisers.³⁴⁴ However, we do not have access to data that would allow us to identify how many of these registered investment advisers and exempt reporting advisers currently qualify as accredited investors. We also lack data to generate precise estimates of the overall number of other institutional accredited investors that may be newly eligible for accredited investor status because disclosure of accredited investor status across all institutional investors is not required and because, while we have information to estimate the number of

some categories of institutional accredited investors, we lack comprehensive data that will allow us to estimate the unique number of investors across all categories of institutional accredited investors under Rule 501(a).

The final amendments will include limited liability companies in Rule 501(a)(3). Based on data from the Internal Revenue Service, there were 2,696,149 limited liability companies at the end of 2017.³⁴⁵ Due to a lack of more detailed publicly available information about limited liability companies, such as the distribution of total assets across companies, we are unable to estimate the number of these limited liability

companies that currently meet the accredited investor requirements of Rule 501(a)(3). As this amendment is a codification of a long standing staff interpretation, we do not expect that the pool of accredited investors will change significantly as a result of this amendment.

Based on analysis of Form D filings, we have identified approximately 173,697 unique issuers (of which the majority were non-fund issuers) that have raised capital through Regulation D offerings from 2009 until 2019. This gives some indication of the scope of issuers that could be affected by the expansion of the accredited investor pool under the final amendments.

TABLE 3—FREQUENCY OF REGULATION D OFFERINGS BY UNIQUE ISSUERS: 2009–2019

Number of offerings	Non-fund issuers		Fund issuers		All Regulation D issuers
	Number of issuers	Proportion (percent)	Number of issuers	Proportion (percent)	
1	80,245	75.9	58,134	95.6	138,379
2	12,574	11.9	1,968	3.2	14,542
3	5,361	5.1	362	0.6	5,723
4	2,874	2.7	126	0.2	3,000
5	1,738	1.6	68	0.1	1,806
6 or more Offerings	2,875	2.8	132	0.4	3,007
Total: Unique Issuers	105,667	.....	60,790	.....	166,457

Lastly, the final amendments to the accredited investor definition likely will impact the market for private offerings in terms of capital raising in certain circumstances. As noted above, currently eligible accredited investors, particularly institutional accredited investors, play a prominent role in Regulation D offerings and have substantial capital. As Table 4 shows, in 2019, issuers in the Regulation D market raised more than \$1.5 trillion. The vast majority of capital raised in this market was raised under Rule 506(b), which has

no limit on the number of purchasers who are accredited investors but limits the number of non-accredited investors to 35 per offering. Offerings under Rule 506(c), under which purchasers are exclusively accredited investors, raised approximately \$66 billion. Table 4 also shows that the amount of capital raised in other exempt offerings was approximately \$1.2 trillion. Most of the capital raised in these other exempt offerings came from Rule 144A offerings, where qualified institutional buyers constitute the ultimate

purchasers of the offerings.³⁴⁶ Finally, Table 4 shows that the total amount of capital raised under Regulation A was approximately \$1 billion in 2019 (less than 1% of the amount raised in Rule 144A offerings). The overwhelming majority of capital raised in these Regulation A offerings was through Tier 2 offerings, for which accredited investors are not subject to investment limits.

³⁴² Identified from Forms ADV filed with the Commission as of December 31, 2019.

³⁴³ *Id.*

³⁴⁴ See 2020 NASAA Investment Adviser Section Annual Report, available at <https://www.nasaa.org/wp-content/uploads/2020/04/2020-IA-Section-Report-FINAL.pdf>.

³⁴⁵ See IRS, Statistics of Income Division, Partnerships, May 2019, Table 8, available at <https://www.irs.gov/pub/irs-soi/17pa08.xlsx>. See also D. Burton Letter.

³⁴⁶ The term “Rule 144A offering” refers to a primary offering of securities by an issuer to one or more financial intermediaries (commonly known as

the “initial purchasers”) in a transaction exempt from registration under the Securities Act, followed by the immediate resale of the securities by the initial purchasers to qualified institutional buyers in reliance on Rule 144A.

TABLE 4—OVERVIEW OF AMOUNTS RAISED IN THE EXEMPT MARKET IN 2019³⁴⁷

Exemption	Amounts reported or estimated as raised in 2019 (billion)
Rule 506(b) of Regulation D	\$1,492
Rule 506(c) of Regulation D	66
Regulation A: Tier 1	0.044
Regulation A: Tier 2	0.998
Rule 504 of Regulation D	0.228
Regulation Crowdfunding ³⁴⁸	0.062
Other exempt offerings ³⁴⁹ ...	1,167

C. Anticipated Economic Effects

In this section, we discuss the anticipated economic benefits and costs of the final amendments to the accredited investor and qualified institutional buyer definitions. We first analyze the potential costs and benefits of the final amendments for each of the affected parties and then discuss how those effects may vary based on the characteristics of issuers and investors. We also discuss the anticipated effects on efficiency, capital formation and competition. Finally, we discuss the

³⁴⁷ Data on Regulation D capital raising is taken from Form D and Form D/A filings. Information on Regulation A capital raising is taken from Form 1-A and Form 1-A/A filings.

³⁴⁸ Data on offerings under Regulation Crowdfunding were collected from Form C filings on EDGAR. For offerings that have been amended, the data reflects information reported in the latest amendment as of the end of the considered period. Regulation Crowdfunding requires an issuer to file a progress update on Form C-U within 5 business days after reaching 100% of its target offering amount. The data on Regulation Crowdfunding excludes withdrawn offerings. Some withdrawn offerings may be failed offerings. Amounts raised may be lower than the target or maximum amounts sought.

³⁴⁹ “Other exempt offerings” are identified from Regulation S and Rule 144A offerings. The data used to estimate the amounts raised in 2019 for other exempt offerings includes data on: Offerings under Section 4(a)(2) of the Securities Act that were collected from Thomson Financial’s SDC Platinum, which uses information from underwriters, issuer websites, and issuer SEC filings to compile its Private Issues database; offerings under Regulation S that were collected from Thomson Financial’s SDC Platinum service; and resale offerings under Rule 144A that were collected from Thomson Financial SDC New Issues database, Dealogic, the Mergent database, and the Asset-Backed Alert and Commercial Mortgage Alert publications to further estimate the number of exempt offerings under Section 4(a)(2) and Regulation S. We included amounts sold in Rule 144A resale offerings because those securities are typically issued initially in a transaction under Section 4(a)(2) or Regulation S but generally are not included in the Section 4(a)(2) or Regulation S data identified above. These amounts are accurate only to the extent that these databases are able to collect such information and may understate the actual amount of capital raised under these offerings if issuers and underwriters do not make this data available.

costs and benefits of reasonable alternatives to the final amendments.

Several commenters expressed general concerns that the analysis in the Proposing Release did not include sufficient data and evidence on the performance of private offerings and therefore that the Commission had not adequately assessed the benefits and costs to potentially newly eligible individual investors from investing in exempt offerings.³⁵⁰ In the Proposing Release, the Commission acknowledged that it is difficult to reach rigorous conclusions about the typical magnitude of investor gains and losses in exempt offerings. Understanding the effect of the amendments on individual investors requires more than a consideration of exempt offerings on their own. In particular, an equally if not more relevant consideration is how sophisticated investors that are currently not eligible to participate in (or significantly restricted from participating in) exempt offerings would benefit from having access to exempt offering investment opportunities as one part of their overall investment strategy. It is difficult to quantify with any reasonable degree of confidence the potential benefits to and cost that may be incurred by newly eligible accredited investors at an individual level or on an aggregate basis. It is, however, clear that many existing accredited investors see benefits in participating in exempt offerings as part of their investment strategy.

Commission staff recently completed a report to Congress on the performance of Regulation D and Regulation A offerings. We have noted some supplementary information contained in this report in our more detailed discussion of the benefits and costs of the final amendments below. This information (including, for example, data on SEC litigation against Regulation D issuers), together with information provided by commenters, helps to further inform our analysis of the costs and benefits of the final amendments.

1. Potential Benefits to Issuers

We expect that issuers interested in raising capital through unregistered offerings will benefit from the final amendments in several ways.

a. More Efficient Capital Raising Process in Exempt Offerings

The final amendments will benefit issuers by potentially increasing the

³⁵⁰ See, e.g., CFA Letter; Healthy Markets Letter; Better Market Letter; NASAA Letter; and CA Attorney General et al. Letter.

efficiency of the process of raising capital in unregistered offerings. Specifically, issuers interested in raising capital from accredited investors under Regulation D must have a reasonable belief that those investors are accredited investors. In addition, issuers conducting offerings under Rule 506(c) are required to take reasonable steps to verify the accredited investor status of all purchasers in the offering. The final amendments may make it easier for issuers to assess and verify an investor’s status as an accredited investor. As discussed in the Proposing Release, compliance with this verification requirement has been cited as a potential impediment to the use of Rule 506(c) to raise capital despite the ability to use general solicitation when conducting these types of offerings.³⁵¹ To the extent that issuers may face challenges complying with this requirement, the final amendments could facilitate the use of Rule 506(c) as a capital raising option by providing issuers with additional avenues (e.g., professional certifications and investment tests) to meet this requirement.

There could be other efficiency gains to issuers from the final amendments. For example, by expanding the number of accredited investors and qualified institutional buyers, certain issuers that are highly uncertain of the degree of interest in their offerings may be able to find and attract investors more easily, thereby lowering search costs. In addition, certain issuers that rely on intermediaries when raising capital may be able to reduce intermediation costs if there is an increase in the number of sophisticated investors who are able to invest directly rather than through an intermediary. Given that the average intermediary fee in Regulation D offerings ranges from approximately 2% (for fund issuers) to 5.5% (for non-fund issuers) of the amount raised, the ability to raise capital without relying on an intermediary may be a significant cost saving for some issuers.³⁵²

There also may be certain efficiency gains for Rule 504 offerings that could increase issuers’ reliance on this currently rarely used exemption. Under Rule 504 of Regulation D, issuers are permitted to use general solicitation or general advertising to offer and sell securities to accredited investors when

³⁵¹ See, e.g., Proposing Release at note 281.

³⁵² See Scott Bauguess, Rachita Gullapalli, & Vladimir Ivanov, *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2017* (Aug. 2018), available at https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf.

offers and sales are made pursuant to state law exemptions from registration that permit general solicitation and general advertising. Because the pool of accredited investors will increase under the final amendments, the cost effectiveness of general solicitation and general advertising under Rule 504 may improve (e.g., due to fixed costs of advertising and solicitation). As a result, certain issuers may increase their reliance on Rule 504 to meet their capital needs. Some of these additional Rule 504 offerings may represent issuers switching from other offering exemptions, such as Rule 506(b). To the extent that will be the case, we expect issuers will only switch to Rule 504 offerings if such offerings are better suited to their particular facts and circumstances.

b. Facilitate Capital Formation by Expanding the Pool of Investors in Exempt Offerings

The final amendments will expand the pool of individual accredited investors and institutional accredited investors compared to the current baseline. The amendments add several new categories of entities to the definition of accredited investor. For example, the final amendments include all SEC- and state-registered investment advisers and all exempt reporting advisers in the definition of accredited investor. This constitutes a pool of approximately 45,000 entities, some of which may not already qualify as accredited investors under the current rules. In addition, a broad range of entities that do not currently qualify as accredited investors will qualify if they meet the \$5 million investments threshold under the final amendments, including, for example, Indian tribes and state and local governmental bodies. With respect to individual investors, as discussed above, we estimate that the upper bound percentage increase of the individual accredited investor pool due to the addition of these individuals will be approximately 4%. However, because many of the individuals that will qualify as accredited investors under the amendments may already qualify as accredited investors based on the current financial thresholds, this percentage likely overestimates the actual increase. In addition, because the newly eligible individuals have income and net worth below the currently required thresholds for individual accredited investors, we expect the increase in the capital supply provided by the pool of individual accredited investors will be proportionately considerably lower than the increase in

the number of individual accredited investors. For example, even in the unlikely event that (1) all 691,041 FINRA-registered securities representatives and 17,543 state-registered investment adviser representatives were newly eligible accredited investors (i.e., no overlap in registration and no overlap with current eligible accredited investors), and (2) all of them elected to invest \$30,000 (which is likely over 15% of many of these investors' income)³⁵³ in unregistered offerings, the aggregate additional capital available would be approximately \$21.3 billion, or an increase of less than 1.4% of the Regulation D market in 2019. Because this analysis assumes no overlap between these sets of individuals and between these individuals and current accredited investors, we expect the actual additional capital will be a small fraction of that number. Each of the entities that will be newly eligible accredited investors under the final amendments will have assets or investments in excess of \$5 million. Thus, we believe that the addition of new categories of entities to the definition of accredited investor is likely to contribute more meaningfully to the increase in potential capital supply than the addition of new categories of individuals.

Generally, accredited investors, and in particular, institutional accredited investors, supply the vast majority of capital raised under Regulation D and are vital to the capital raising needs of issuers conducting Regulation D offerings.³⁵⁴ Therefore, we anticipate that expanding the pool of accredited investors under the final amendments will lead to an increase in the aggregate potential supply of capital available for exempt offerings under Regulation D. Because we lack data on the total number of newly eligible accredited

³⁵³ To qualify based on the income threshold, an accredited investor would require income greater than \$200,000 (or joint income greater than \$300,000 with their spouse) in each of the two most recent years and a reasonable expectation of the same income in the current year, so the investor's income in any one year could be greater than either threshold.

³⁵⁴ See, e.g., NAM Letter (stating that “[m]anufacturers in every part of the country need capital for the operational challenges they face, and strong access to capital for growing manufacturers means job creation and economic expansion in all 50 states. As they grow, these small businesses utilize the SEC's exemptions from registration to conduct private offerings—often raising capital from members of the communities in which they operate. Participation in offerings conducted under a registration exemption is usually restricted to accredited investors, meaning that the qualifications set by the SEC have a real-world impact on manufacturing businesses' ability to raise capital”).

investors and the size of their asset portfolios, we are not able to estimate the magnitude of the aggregate increase in the potential capital supply, and therefore the overall impact on the market for Regulation D offerings is uncertain. However, as illustrated in the example above, we expect the impact of newly eligible individual accredited investors on capital supply to be limited. Increased capital supply from newly eligible institutional investors may be relatively more meaningful in certain offerings and could potentially increase competition among accredited investors in those offerings, thereby lowering the cost of capital and promoting capital formation.³⁵⁵ As discussed in more detail below, we expect these benefits will, in particular, be realized by issuers that have greater uncertainty about the interest in their prospective offerings, particularly ones that are small, in early development stages, or in geographic areas that currently have lower concentrations of accredited investors.

Similarly, the final amendments could enhance capital formation in the Regulation A market. As accredited investors are not subject to investment limits under Tier 2 of Regulation A, expanding the pool of accredited investors could enable issuers that are conducting offerings under Tier 2 of Regulation A to raise more capital and/or raise capital at a lower cost (e.g., due to lower search and transaction costs).

Expanding the definition of qualified institutional buyer under Rule 144A will increase the number of potential buyers of Rule 144A securities, thereby increasing the aggregate potential supply of capital and increasing competition among investors for Rule 144A offerings. We expect as a result of any such increase that current and prospective issuers of Rule 144A offerings will experience lower costs of raising capital (e.g., due to lower search and transaction costs), which will facilitate capital formation in this market.

Some commenters disagreed with the assessment in the Proposing Release of the potential positive effects on capital

³⁵⁵ See, e.g., Nexus Private Capital Letter (stating that “[b]y changing the Definition of Accredited Investor as proposed, our company should realize two significant benefits: (a) Greater access to capital to reinvest (which benefits a wide range of stakeholders); and (b) greater confidence that we are staying within our regulatory lanes (which is important to us)”; and J. Angel Letter (stating that “[t]he Commission should be generous in awarding accredited investor status. This will both promote capital formation by increasing the pool of capital available for private placements, and also make it possible for more investors to reap the rewards of investing in private deals”).

formation from the final amendments. In particular, some commenters asserted that there is currently no evidence of scarcity of capital in the market for exempt offerings, which suggests that positive net present value projects can already get funded and that issuers with economically viable projects will have low incentives to seek capital (outside their currently established funding channels) from the individuals that become newly eligible accredited investors.³⁵⁶ Therefore, according to these commenters, expanding the accredited investor definition to individuals beyond the current income and wealth thresholds could have little impact on capital formation. In addition, these commenters suggested there may even be a negative incremental impact on capital formation to the extent adverse selection occurs, wherein the newly eligible individual accredited investors may only be offered highly speculative investment opportunities.³⁵⁷

We disagree with these commenters' assessment of the potential effects on capital formation. Even if commenters are correct that there will be little increased demand from issuers with positive net present value projects for capital from the (comparatively low-capitalized) individuals that will become newly eligible accredited investors, there is no reason to believe this necessarily means that such issuers will not benefit from access to capital from (more well-capitalized) entities that will become newly eligible accredited investors or qualified institutional buyers under the final amendments (who we expect will be responsible for any meaningful increase in capital supply, as we noted above). Therefore, we still anticipate that the increased potential supply of institutional capital in the market for exempt offerings is likely to incrementally decrease the cost of capital (e.g., due to lower search and transaction costs) for certain issuers that rely on capital from institutional

³⁵⁶ See, e.g., NASAA Letter and Better Markets Letter.

³⁵⁷ See, e.g., NASAA Letter (stating that "[e]vidence that promising and successful private companies have significant access to institutional private capital strongly suggests that the only companies eager to sell to accredited retail investors are speculative and suspect enterprises"); and Better Markets Letter (stating that "given the glut of funding available to viable companies (including, historically low levels of interest rates which cause lenders and investors to compete to find viable borrowers/issuers), companies that have challenges finding investors, and therefore need to resort to soliciting non-Accredited Investors, would need to have been denied by sophisticated investors and those who know the business or company's executives well").

accredited investors or qualified institutional buyers, thereby promoting capital formation. In addition, because we believe that the individuals that become newly eligible accredited investors will have the financial sophistication needed to assess the various risks of unregistered offerings, including the risk of adverse selection, the likelihood of these individuals investing in highly speculative and potentially negative net present value projects may be attenuated.

c. Increase Liquidity of Securities Issued in Unregistered Offerings

We expect the final rule to have an effect on the liquidity of securities issued in unregistered offerings. For example, the amendments to the qualified institutional buyer definition could facilitate resales of Rule 144A securities by holders of these securities by expanding the pool of potential purchasers in resale transactions. This could increase demand for Rule 144A securities and have an impact on the price and liquidity of these securities when offered and sold by the issuer in Rule 144A offerings and in subsequent resale transactions. Because we do not have access to data that would enable us to estimate the magnitude of the potential increase in demand due to the newly eligible qualified institutional buyers, we are unable to quantify any such potential changes in the liquidity of Rule 144A securities as a result of the final amendments.

Moreover, investors that are seeking to resell restricted securities and that rely on the Rule 144 safe harbor for purposes of determining whether the sale is eligible for the Section 4(a)(1) exemption are required to meet certain conditions under Rule 144, which include holding the restricted securities for six months or one year, depending on the circumstances. An expanded accredited investor pool could make it easier to conduct a private resale of restricted securities in a time period shorter than six months or one year. For example, an investor may seek to rely on the Section 4(a)(7) exemption for the resale, which requires a number of conditions to be met, including that the purchaser is an accredited investor. If the final amendments make it easier to conduct private resales of restricted securities, this could possibly reduce the liquidity discount for restricted securities when sold under Rule 506 (or another exemption), making Rule 506 more attractive to issuers as well as investors.

Additionally, the expanded accredited investor definition could impact resales under Rule 501 of

Regulation Crowdfunding during the one-year resale restriction period, thus potentially affecting the liquidity discount for such securities. Securities purchased in a Regulation Crowdfunding transaction generally cannot be resold for a period of one year, unless they are transferred to, among others, an accredited investor.³⁵⁸ An expanded pool of accredited investors as a result of the final amendments could make it easier for holders of such securities to find a potential buyer, thus potentially leading to a lower liquidity discount at the time of issuance.

d. Other Benefits

The final amendments to the accredited investor definition will allow knowledgeable employees of private funds to qualify as accredited investors for purposes of investing in offerings by these funds without the funds themselves losing accredited investor status when the funds have assets of \$5 million or less.³⁵⁹ This amendment will enable private funds to offer knowledgeable employees additional types of performance incentives, such as investing in the fund. Permitting employees who participate in the investment activities of a private fund to co-invest in the private fund may align incentives between such employees and fund investors. Although we expect that the increase in the capital that is supplied to private funds by knowledgeable employees of these private funds will be relatively small, the potential gains to the funds in incentive alignment and employee retention could affect fund performance positively.

In addition, the final amendments also will increase the number of potential investors with whom issuers undertaking a registered offering may be able to communicate under Section 5(d) of the Securities Act and Securities Act Rule 163B (the test-the-waters provisions). By expanding the pool of potential institutional accredited investors and qualified institutional buyers, the amendments will increase certain issuers' ability to gather valuable

³⁵⁸ See Rule 501 under Regulation Crowdfunding [17 CFR 227.501]. Such securities could also be transferred (i) to the issuer of the securities; (ii) as part of an offering registered with the Commission; or (iii) to a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance.

³⁵⁹ Under Rule 501(a)(8), a private fund with assets of \$5 million or less may qualify as an accredited investor if all of the fund's equity owners are accredited investors.

information about investor interest before a potential registered offering. This could result in a more efficient and potentially lower-cost and lower-risk capital raising process for such issuers.

2. Potential Benefits to Investors

We believe that the individuals and institutions that will be newly eligible accredited investors under the final amendments have the requisite financial sophistication for meaningful investment analysis, and could therefore benefit from gaining broader access to investment opportunities in private capital markets and greater freedom to make investment decisions based on their own analysis and circumstances.

There is recent empirical evidence that, for a number of reasons, issuers tend to stay private for longer than in the past and have been able to grow to a size historically available only to their public peers.³⁶⁰ This suggests that the high-growth stage of the lifecycle of many issuers occurs while they remain private. Thus, investors that do not qualify for accredited investor status may not be able to participate in the high-growth stage of these issuers because it often occurs before they engage in registered offerings.³⁶¹ Allowing additional financially sophisticated investors to invest in unregistered offerings of private firms will potentially enable them to participate in the high-growth stages of these firms.

All else equal, expanding the set of investment opportunities can increase diversification and improve the risk-return tradeoff of an investor's portfolio. More specifically, adding private investments to the set of investable assets could allow an investor to expand the efficient risk-return frontier and construct an optimal portfolio with risk-return properties that are better than, or similar to, the risk-return properties of a portfolio that is constrained from investing in certain asset classes, leading to a more efficient portfolio allocation.³⁶² For example, recent research has shown that investments in

funds of private equity funds can outperform public markets.³⁶³ Thus, to the extent access to private offerings expands the efficient risk-return frontier for newly eligible accredited investors and qualified institutional buyers, we expect these investors will potentially benefit from an improvement in portfolio efficiency.

While private investments may offer the opportunity to invest in certain early-stage or high-growth firms that are not as readily available in the registered market, private investments, particularly in small and startup companies, generally also pose a high level of risk, as noted by several commenters.³⁶⁴ For example, based on Bureau of Labor Statistics (BLS) data on establishment survival rates, the five-year survival rates for private sector establishments formed in March in each of the years 2010–2014 ranged between 50% and 51%.³⁶⁵ The higher risks of private investments may be mitigated by the financial sophistication of newly eligible accredited investors or if these investors invest in professionally managed private funds rather than selecting private company investments directly.³⁶⁶

Estimating the aggregate potential gains in portfolio efficiency from investments in private offerings is difficult, because comprehensive, market-wide data on the returns of private investments is not available due to a lack of required disclosure about these investment returns, the voluntary nature of disclosure of performance information by private funds, and the very limited nature of secondary market trading in these securities. Academic studies of the returns to private investments acknowledge limitations and biases in the available data.³⁶⁷ For

instance, it has been shown that the data on returns of private investments typically exhibit a survival bias due to the lack of reporting of underperforming investments and that the use of appraised valuations to construct returns on assets that are nontraded can make private investments seem less risky. There is also a lack of comprehensive data on angel investment returns³⁶⁸ and entrepreneur

Inflows, Skilled GPs, and/or Risk?, 15 *Eur. Fin. Mgmt.* 643 (2009); Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?*, 129 *J. Fin. Econ.* 287 (2018); Robert S. Harris, Tim Jenkinson, & Steven N. Kaplan, *Private Equity Performance: What Do We Know?*, 69 *J. Fin.* 1851 (2014); and Kasper Nielsen, *The Return to Direct Investment in Private Firms: New Evidence on the Private Equity Premium Puzzle*, 17 *Eur. Fin. Mgmt.* 436 (2011); (ii) VC performance (see, e.g., John H. Cochrane, *The Risk and Return of Venture Capital*, 75 *J. Fin. Econ.* 3 (2005); Arthur Korteweg & Stefan Nagel, *Risk-Adjusting the Returns to Venture Capital*, 71 *J. Fin.* 1437 (2016); and Axel Buchner, Abdulkadir Mohamed, & Armin Schwienbacher, *Does Risk Explain Persistence in Private Equity Performance?*, 39 *J. Corp. Fin.* 18 (2016)); and (iii) hedge fund returns (see, e.g., William Fung & David A. Hsieh, *Hedge Fund Benchmarks: A Risk-Based Approach*, *Fin. Analysts J.*, Sept./Oct. 2004, at 65; William Fung & David A. Hsieh, *Measurement Biases in Hedge Fund Performance Data: An Update*, *Fin. Analysts J.*, May/June 2009, at 36; Manuel Ammann, Otto R. Huber, & Markus Schmid, *Benchmarking Hedge Funds: The Choice of the Factor Model* (Working Paper, 2011); Zheng Sun, Ashley W. Wang, & Lu Zheng, *Only Winners in Tough Times Repeat: Hedge Fund Performance Persistence over Different Market Conditions*, 53 *J. Fin. & Quantitative Analysis* 2199 (2018); Charles Cao et al., *What Is the Nature of Hedge Fund Manager Skills? Evidence from the Risk-Arbitrage Strategy*, 51 *J. Ag. & Quantitative Analysis* 929 (2016); Vikas Agarwal, T. Clifton Green, & Honglin Ren, *Alpha or Beta in the Eye of the Beholder: What Drives Hedge Fund Flows?*, 127 *J. Fin. Econ.* 417 (2018); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Systematic Risk and the Cross-Section of Hedge Fund Returns*, 106 *J. Fin. Econ.* 114 (2012); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Macroeconomic Risk and Hedge Fund Returns*, 114 *J. Fin. Econ.* 1 (2014); Andrea Buraschi, Robert Kosowski, & Fabio Trojani, *When There Is No Place to Hide: Correlation Risk and the Cross-Section of Hedge Fund Returns*, 27 *Rev. Fin. Stud.* 581 (2014); Ravi Jagannathan, Alexey Malakhov, & Dmitry Novikov, *Do Hot Hands Exist Among Hedge Fund Managers? An Empirical Evaluation*, 65 *J. Fin.* 217 (2010); Andrea Buraschi, Robert Kosowski, & Worrawat Sritrakul, *Incentives and Endogenous Risk Taking: A Structural View on Hedge Fund Alphas*, 69 *J. Fin.* 2819 (2014); Ronnie Sadka, *Liquidity Risk and the Cross-Section of Hedge-Fund Returns*, 98 *J. Fin. Econ.* 54 (2010); and Ilija D. Dichev & Gwen Yu, *Higher Risk, Lower Returns: What Hedge Fund Investors Really Earn*, 100 *J. Fin. Econ.* 248 (2011)).

³⁶⁸ Studies we have identified have used small, selected samples—sometimes from foreign markets—that do not generalize to the entire U.S. market. See, e.g., Vincenzo Capizzi, *The Returns of Business Angel Investments and Their Major Determinants*, 17 *Venture Cap.* 271 (2015) (using a small sample of Italian data); and Colin M. Mason & Richard T. Harrison, *Is It Worth It? The Rates of Return from Informal Venture Capital Investments*, 17 *J. Bus. Venturing* 211 (2002) (using a small UK sample). Investments through AngelList and similar

³⁶³ See, e.g., Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?*, 129 *J. Fin. Econ.* 287 (2018).

³⁶⁴ See, e.g., CA Attorney General et al. Letter; NASAA Letter; Better Markets Letter; and CFA Letter.

³⁶⁵ See U.S. Bureau of Labor Statistics, *Survival of Private Sector Establishments by Opening Year*, available at https://www.bls.gov/bdm/us_age_naics_00_table7.txt.

³⁶⁶ See, e.g., the recommendation from an independent research organization to expand retail investor access to closed-end registered investment funds with significant exposures to alternatives, available at <https://www.capmktreg.org/wp-content/uploads/2018/10/Private-Equity-Report-FINAL-1.pdf>.

³⁶⁷ Research has examined (i) private equity returns (see, e.g., Steven N. Kaplan & Antoinette Schoar, *Private Equity Performance: Returns, Persistence, and Capital Flows*, 60 *J. Fin.* 1791 (2005); Andrew Metrick & Ayako Yasuda, *Venture Capital and Other Private Equity: A Survey*, 17 *Eur. Fin. Mgmt.* 619 (2011); Christian Diller & Christoph Kaserer, *What Drives Private Equity Returns? Fund*

³⁶⁰ See Michael Ewens & Joan Farre-Mensa, *The Deregulation of the Private Equity Markets and the Decline in IPOs* (Nat'l Bureau of Econ. Research, Working Paper No. 26317, Sept. 2019) ("Ewens & Farre-Mensa (2019)").

³⁶¹ For example, according to one study, the median age of a firm that went public in 1999 was five years, and in 2018 the median age was 10 years. See Jay R. Ritter, *Initial Public Offerings: Median Age of IPOs Through 2019*, Jan. 2020, available at <https://site.warrington.ufl.edu/ritter/files/2020/02/IPOs2019Age.pdf>.

³⁶² See, e.g., John L. Maginn et al., *Managing Investment Portfolios: A Dynamic Process* (3rd ed. 2007) ("Maginn et al. (2007)"); and Zvi Bodie, Alex Kane, & Alan J. Marcus, *Investments* (10th ed. 2013).

returns on investment of their own funds and savings in starting a private business.³⁶⁹

The final amendments also include exempt reporting advisers in the definition of accredited investor, in addition to SEC- and state-registered investment advisers.³⁷⁰ Because exempt reporting advisers are professionals managing either venture capital funds or small investment funds as a business, we believe they also have the requisite financial sophistication needed to conduct meaningful investment analysis. Expanding the definition of accredited investor to encompass this additional category of advisers will allow these professionals to benefit from expanded access to investments in unregistered offerings.

Other aspects of the final amendments could provide additional benefits for investors. For example, persons that are “knowledgeable employees” of a private fund may benefit from increased access to investment opportunities with the fund as well as the availability of additional performance incentives. If investment by knowledgeable employees leads to better incentive alignment between the fund and investment personnel, other investors in the private fund could potentially benefit from enhanced fund performance.

In addition, the final amendments allowing natural persons to include spousal equivalents when determining joint income or net worth under Rule 501 of Regulation D will allow such investors to potentially benefit from increased investment opportunities in private offerings similar to the other

platforms allow accredited investors to make VC-like investments in startups. For some evidence on the performance of such investments, see, e.g., Olga Itenberg & Erin E. Smith, *Syndicated Equity Crowdfunding: The Trade-Off Between Deal Access and Conflicts of Interest* (Simon Bus. Sch., Working Paper No. FR 17-06, Mar. 2017).

³⁶⁹ See, e.g., Elisabeth Mueller, *Returns to Private Equity—Idiosyncratic Risk Does Matter!*, 15 Rev. Fin. 545 (2011) (“Mueller (2011)”); Thomas Astebro, *The Returns to Entrepreneurship*, in *Oxford Handbook of Entrepreneurial Finance* (Douglas Cumming ed. 2012) (“Astebro (2012)”); and Thomas J. Moskowitz & Annette Vissing-Jørgensen, *The Returns to Entrepreneurial Investment: A Private Equity Premium Puzzle?*, 92 a.m. Econ. Rev. 745 (2002) (“Moskowitz & Vissing-Jørgensen (2002)”); For instance, Moskowitz and Vissing-Jørgensen (2002) examine the returns to investing in U.S. non-publicly traded equity and find that, although entrepreneurial investment is extremely concentrated, the returns to private equity are no higher than the returns to public equity. They attribute the willingness of households to invest substantial amounts in a single privately held firm with a seemingly far worse risk-return trade-off to large nonpecuniary benefits, a preference for skewness, or overestimated probability of survival.

³⁷⁰ See *supra* Section II.B.2.a.

newly eligible accredited investors, as discussed above.

With respect to entities, including additional entity types within the definitions of accredited investor and qualified institutional buyer will provide equal access to investment opportunities for entities with similar attributes of financial sophistication. The final amendments thus could help level the playing field among institutional investors and avoid certain inefficiencies associated with specific corporate forms. Likewise, the proposed amendment to include a catch-all category of accredited investor for entities with investments in excess of \$5 million would remove impediments to utilizing alternative legal forms and permit sophisticated investors to take advantage of different forms of business organization that may develop in the future, without having to worry about losing their accredited investor status.

Because the inclusion of limited liability companies in the definition of accredited investors is a codification of a long standing staff interpretation, we do not expect limited liability companies to receive incremental benefits as a result of the final amendments. Similarly, because most family offices likely already are considered accredited investors, we do not expect them to realize significant benefits as a result of the final amendments. However, family clients that are part of a family office will also qualify as accredited investors under the final amendments. To the extent such family clients do not currently qualify as accredited investors based on the financial thresholds for natural persons, we expect them to benefit from increased access to investment opportunities in unregistered offerings.

3. Potential Costs to Issuers

The final amendments could have a potential impact on the market for registered offerings, but in light of the relatively small amount of incremental capital that would become potentially available in the private markets for issuers of sufficient size and sophistication to conduct a registered offering, we would expect the impact, if any, to be modest. However, certain commenters suggested that newly eligible accredited investors and qualifying institutional buyers may shift capital away from registered offerings and towards unregistered offerings as a result of the amendments.³⁷¹ To the

³⁷¹ See, e.g., NASAA Letter (stating that “[a] clear effect of the Proposal would be to further diminish the public markets by drawing investors away into riskier, illiquid private alternatives”).

extent such a switch in investment focus occurs, it could in theory decrease the amount of capital flowing into registered offerings and hence negatively affect issuers in this market through a potential increase in capital raising costs. However, as discussed above, the amount of incremental capital that would become potentially available for investment in exempt offerings is expected to be relatively small, particularly when compared to the aggregate amount of institutional capital that currently is eligible to participate in registered and exempt offerings. Moreover, the amendments seek to identify financially sophisticated individual and institutional accredited investors and qualified institutional buyers with the knowledge and investment experience to assess the differences in the risk-return profiles of public and private market investments and other asset classes and appropriately allocate their investments to diversify those risks. Accordingly, these newly eligible accredited investors and qualified institutional buyers will not necessarily shift their investment allocations from the registered offerings market but instead may increase investments in unregistered offerings by diverting capital from other investment opportunities (e.g., savings, real estate). They also may shift their investments from indirect investments in exempt securities (for example, through financial products) to direct investments. We are unable to quantify the potential impact on the market for registered offerings because we do not have access to data on these investors’ investment portfolios or their preferences for different asset classes that would allow us to estimate how investors may choose to reallocate their investments as a result of the final amendments. However, because of the specific risk characteristics and relative illiquidity of private offerings, we believe the new investment opportunities in private offerings are more likely to be viewed as complements to current investments in registered offerings than substitutes. In addition, the investors that will become newly eligible accredited investors and qualified institutional buyers under the final amendments represent only a small fraction of currently invested capital in registered offerings. For these reasons, we do not expect any meaningful effect on the market for registered offerings.

4. Potential Costs to Investors

Newly eligible accredited investors will have access to more investment options under the final amendments.

However, these investment options come without the additional investor protections of registration under the Securities Act and could entail greater costs related to illiquidity, agency costs, adverse selection, and higher business risk as compared to investments in the public capital markets. Thus, to the extent newly eligible accredited investors allocate more capital to private offerings, they could face greater overall investment risk.

We anticipate that some natural-person investors who do not meet the income and wealth thresholds under the current definition, but who will qualify as accredited investors under the final amendments, may not be able to sustain a loss of an investment in an unregistered offering. For example, an individual who has obtained a Series 7 license may possess experience in investing but may be less able to withstand investment losses of the same nominal size than an accredited investor qualifying on the basis of personal wealth.³⁷² However, we believe the relatively high level of financial sophistication demonstrated by professional certifications and designations or other credentials increases the likelihood that such individuals will be able to assess the risk of loss and avoid losses they cannot sustain through various actions, including, for example, calibrating investment size.

Several commenters expressed concerns that the Commission had not appropriately considered the various risks individual investors face in private offerings, such as risks related to low levels of disclosure, poor oversight, illiquidity, increased adverse selection, and outright fraud, which can make private offerings less valuable and more risky to individual investors.³⁷³ We agree with commenters that certain private offerings have distinct and in some case more substantial risks than public offerings. These risks and potential costs were recognized in the economic analysis in the Proposing Release,³⁷⁴ and we have expanded our discussion of these potential costs below. In addition, we recognize that in some cases private offerings may not be appropriate investments for individual investors who lack the knowledge and financial sophistication to recognize or evaluate the risks of the offerings, including the risk of over-allocating capital to such investments in light of

their income or net worth. However, as discussed previously, we believe that certain professional certifications and designations or other credentials can provide an appropriate indication of the level of financial sophistication that renders individual investors capable of evaluating the merits and risks of a prospective investment in an exempt offering.³⁷⁵ We also believe that, to the extent accredited investors are financially sophisticated, they will generally not participate in an exempt offering unless they think it has a favorable risk-return profile, and that they will also consider their ability to sustain a loss before investing.

We also note that an assessment of the economic effects of the final amendments on newly eligible accredited investors should consider the source of the funds for investment in private offerings. Any increase in overall portfolio risk from investments in private offerings by newly eligible accredited investors and qualified institutional buyers may be mitigated to the extent some of the new capital invested in exempt offerings would have otherwise been allocated to other high-risk assets that also may require additional due diligence and other analysis,³⁷⁶ or to the extent the investors will reallocate some other portfolio capital to less risky assets. However, due to data limitations, we are unable to quantify the extent of potential portfolio reallocation and the resulting effect on overall portfolio risk.

Investing in securities that are acquired in exempt offerings could reduce investors' liquidity while increasing their transaction costs, compared to alternative investments in registered securities.³⁷⁷ This illiquidity is generally related to legal restrictions on the transferability of securities issued in many exempt offerings; a lack of—or limited—trading market for the

securities;³⁷⁸ long-term horizon for exits for private issuers; and, in cases of private funds investing in private issuers, standard contractual terms designed to enable a long-term horizon for the portfolio.³⁷⁹ However, we believe that the cost of accredited investors not being able to manage their liquidity risk will be mitigated to the extent these investors are financially sophisticated, and therefore able to identify and avoid risks they cannot sustain. We also note that such liquidity considerations may be reflected in the priority of the securities and to the extent these investors are financially sophisticated, we believe they will be able to take these factors into account in making investment decisions.

All else being equal, the more limited disclosure requirements for unregistered offerings may make them more risky investments compared to registered offerings.³⁸⁰ For example, more limited disclosure makes it harder for prospective investors to evaluate business prospects or the financial health of the issuer and may result in investors spending more resources on due diligence or other analysis. In addition, as suggested by some commenters,³⁸¹ individual accredited investors and institutional accredited investors with low amounts of assets under management who lack the ability to perform more extensive due diligence on their own, or lack the bargaining power to extract more disclosure from the private issuers,³⁸² may be subject to adverse selection, in the sense that they may be offered highly speculative investment opportunities that are rejected by more sophisticated investors with the ability to perform extensive due diligence or have the bargaining

³⁷⁸ See, e.g., David F. Larcker, Brian Tayan, & Edward Watts, *Cashing It In: Private-Company Exchanges and Employee Stock Sales Prior to IPO*, Stanford Closer Look Series (Sept. 12, 2018).

³⁷⁹ See, e.g., Private Equity: Fund Types, Risks and Returns, and Regulation (Douglas Cumming ed., 2011).

³⁸⁰ For example, issuers of securities in unregistered offerings generally are not required to provide information comparable to that included in a registration statement, and Commission staff does not review any information that may be provided to investors in these offerings. See 2015 Staff Report. See also, e.g., NASAA Letter and Healthy Markets Letter.

³⁸¹ See, e.g., Better Markets Letter and NASAA Letter.

³⁸² See, e.g., NASAA Letter (stating that “[r]etail investors generally will not have the leverage or bargaining power to obtain the information needed to make informed decisions about private offerings”) and Healthy Markets Letter (stating that “in the private markets, investor rights—much as access to key information about the companies themselves—are left to the bargaining power of the parties. This will naturally favor those with greater economic clout and access over those with less, such as smaller institutions or retail investors”).

³⁷² See, e.g., CA Attorney General et al. Letter and NASAA Letter.

³⁷³ See, e.g., CA Attorney General et al. Letter; Better Markets Letter; CFA Letter; Healthy Markets Letter; NASAA Letter; and PIABA Letter.

³⁷⁴ See Section VI.D.4 of the Proposing Release.

³⁷⁵ See *supra* Section II.B.1.a.

³⁷⁶ These could be investments both in other parts of the securities market (e.g., leveraged investments in individual listed securities; short positions; holdings of registered securities of foreign, small-cap, and over-the-counter (OTC) issuers; and holdings of registered nontraded securities, including REITs and structured notes) and outside of the securities market (e.g., holdings of futures, foreign exchange, real estate, individual small businesses, and peer-to-peer lending).

³⁷⁷ See, e.g., Better Markets Letter (stating that “the [private] securities themselves—to the extent they can even be traded—are very illiquid”); CFA Institute letter (stating that “Current conditions heighten the illiquidity risks that are inherent in private markets”); Healthy Markets Letter (stating that “[l]iquidity risks and trading costs for public securities are often significantly lower than for similarly-situated private securities”); and Nasdaq Letter (stating that “private investments that are inherently risky and illiquid”).

power to demand more disclosure.³⁸³ However, we believe that financially sophisticated investors, such as the newly eligible accredited investors under the final amendments, can take these factors into account in making investment decisions.

Further, investing in securities of private companies for which less information is publicly available, also could increase the agency costs for investors. Because investors will potentially have less information about these private companies on an ongoing basis compared to similar public companies, they may be less able to effectively monitor the management of these companies. As a result, investors in securities of private companies may bear a heightened risk that management may take actions that reduce the value of their stakes in such companies.³⁸⁴ Further, the combined presence of small individual investors without control rights and insiders or large private investors with concentrated control rights is likely to exacerbate agency conflicts. Such agency conflicts, as well as potentially an inability to negotiate preferential terms (such as downside protection options, liquidation preferences, and rights of first refusal) might place individual accredited investors, dollar-for-dollar, at a disadvantage to insiders and large investors.³⁸⁵ The impact of agency conflicts on minority investors in private companies might be relatively more significant than at exchange-listed companies because private companies generally are not subject to the governance requirements of exchanges or various proxy statement disclosures.

The risks related to limited disclosure in private offerings are mitigated for accredited investors that participate in Regulation A offerings because they have access to information comparable to that accompanying registered offerings—*e.g.*, publicly available offering circulars on Form 1–A (for both Tier 1 and Tier 2 offerings), ongoing reports on an annual and semiannual basis (Tier 2 offerings), and additional requirements for interim current event updates (Tier 2 offerings).

Regarding some commenters' specific concerns that individuals that become newly eligible accredited investors will be deliberately targeted by the lowest

³⁸³ Because we do not have access to detailed data that allows us to identify the risk characteristics of exempt offerings that are available to different types of accredited investors, we are not able to quantify the extent to which different types of accredited investors are subject to adverse selection problems in exempt offerings.

³⁸⁴ See, *e.g.*, Healthy Markets Letter.

³⁸⁵ *Id.*

quality private issuers or be targets for outright fraud,³⁸⁶ we note that these investors largely will be registered representatives of investment advisers and broker-dealers or knowledgeable employees of private funds, and therefore they are likely on average to have a greater awareness of the risk of fraud and greater ability to identify fraudulent private offerings compared to individual investors who are not such financial professionals.³⁸⁷ We also note that investors will continue to be protected by the general antifraud provisions of the federal and state securities laws.

One commenter also asserted that the analysis in the Proposing Release failed to consider evidence on fraud in private offerings and referenced reports providing survey results on state securities enforcement activities.³⁸⁸ The reports show that Regulation D offerings were among the most common types of offerings that led to or were the focus of enforcement investigations by the surveyed state securities regulators.³⁸⁹ We agree that there is misconduct in some exempt offerings, and we believe accredited investors need to be aware of and consider the risk of misconduct in private offerings when making investment decisions. However, we do not think that the currently available evidence on misconduct necessarily suggests that misconduct in exempt offerings is widespread, given that the number of detected misconduct cases is low relative to the number of exempt offerings. For example, a recently completed analysis by Commission staff of publicly available information on SEC litigation against Regulation D issuers found that there were relatively few SEC civil court cases involving Form D filers over the 2009–2019 period compared to the total number of filers.³⁹⁰ Not all misconduct is detected,

³⁸⁶ See *e.g.*, NASAA Letter; CA Attorney General et al. Letter; and PIABA Letter.

³⁸⁷ In addition, based on staff experience, many fraudulent private offerings are performed outside the exempt offering framework altogether, making the issue of investor accreditation unlikely to be a deciding factor in the choice to commit fraud.

³⁸⁸ See CA Attorney General et al. Letter.

³⁸⁹ See NASAA Enforcement Section, *NASAA Enforcement Report: 2015 Report on 2014 Data 7* (2015), available at https://www.nasaa.org/wp-content/uploads/2011/08/2015-Enforcement-Report-on-2014-Data_FINAL.pdf; NASAA Enforcement Section, *NASAA Enforcement Report: 2014 Report on 2013 Data 7* (2014), available at https://www.nasaa.org/wp-content/uploads/2011/08/2014-Enforcement-Report-on-2013-Data_110414.pdf; and NASAA Enforcement Section, *NASAA Enforcement Report: 2013 Report on 2012 Data 7–8* (2013), available at <https://www.nasaa.org/wp-content/uploads/2013/10/2013-Enforcement-Report-on-2012-data.pdf>.

³⁹⁰ Based on Ives Group's Audit Analytics data on litigation and private placements from 2009 through

and the number of undetected cases is inherently unobservable. It is therefore not possible to ascertain whether undetected misconduct in exempt offerings is more widespread than undetected misconduct in registered offerings or other investment options.

One commenter stated that brokers selling private offerings to retail investors appear to be more likely to be associated with customer complaints and potential misconduct.³⁹¹ We believe that the individuals who will qualify as newly accredited investors based on certain professional certifications or designations or other credentials are more likely to be able to protect themselves from potential broker misconduct. These individuals largely will be registered representatives of investment advisers or broker-dealers that can give investment advice or recommendations to other investors, and therefore should have the professional knowledge and financial sophistication to be able to identify and evaluate the conditions and conflicts of interest that may incentivize brokers to sell excessively risky or lower quality private offerings. We also note that, as a result of Regulation Best Interest, a broker-dealer's recommendation of a private offering to a retail customer is required to be in the retail customer's best interest, without putting the financial or other interest of the broker ahead of the interest of the retail customer, which we expect will lead to a reduction of unmitigated conflicts of interests.³⁹²

While investing in securities acquired in exempt offerings may increase an investor's diversification (as discussed above), there are practical frictions that can make it difficult for an investor to diversify risk using these investments. For example, investment minimums

2019, Commission staff identified 227 SEC-related civil complaints involving Form D filers (221 for non-fund filers and six for fund filers), some of which did not involve securities offerings, and excluding cases that were dismissed or ruled in favor of the defendant. By comparison, Commission staff estimated from Audit Analytics data that there were 108,158 (69,642) unique non-fund (fund) Form D filers during this period. As a caveat, these estimates are affected by the coverage of individual CIKs in the Audit Analytics litigation database and do not distinguish offering fraud from financial reporting and other violations that resulted in SEC litigation. In particular, the data reveal misconduct, whether related to offerings or to disclosure violations, that is detected and results in litigation against the issuer, which underestimates the rate of misconduct to the extent that detection is difficult. See DERA's *Report to Congress on Regulation A/Regulation D Performance* ("DERA Report") available at <https://www.sec.gov/files/Report%20to%20Congress%20on%20Regulation%20A.pdf>.

³⁹¹ See CA Attorney General et al. Letter.

³⁹² See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34–86031 (Jun. 5, 2019) [84 FR 33318 (Jul. 12, 2019)].

demand by certain issuers may decrease or eliminate the diversification benefits of incorporating private investments in an individual investor's portfolio, which is likely to be a concern especially for those individuals who will be newly eligible accredited investors under the amendments as they have comparatively lower levels of income or net worth. Further, it has been shown that the data on returns of private investments typically exhibits smoothing due to the infrequent nature of observation of returns and/or the use of appraised valuations and other methods to construct returns on assets that are nontraded.³⁹³ This can result in an investor significantly overestimating the diversification benefits of private investments and underestimating the risk of private investments.³⁹⁴ Additionally, when compared to traded securities of public companies, private investments may be characterized by considerable downside and tail risk due to the frequently non-normally distributed returns.³⁹⁵ Overall, given their financial sophistication, we think that the likelihood that the newly accredited investors under the final amendments will misunderstand the risk profile and associated portfolio constraints of securities acquired in exempt offerings is relatively low.

Additionally, the increased competition amongst investors under an expanded accredited investor definition could lower investors' expected returns for private assets. That is, as more capital is available in the unregistered markets, investors could receive lower returns due to the entry of newly-accredited investors with a lower required rate of return or reduced search frictions associated with finding accredited investors.

5. Variation in Economic Effects

The magnitudes of the benefits and costs discussed above are expected to vary depending on the particular

³⁹³ See, e.g., Gregory W. Brown, Oleg R. Gredil, & Steven N. Kaplan, *Do Private Equity Funds Manipulate Reported Returns?*, 132 J. Fin. Econ. 267 (2019); Arthur Korteweg, *Risk Adjustment in Private Equity Returns* (Working Paper, 2018) ("Arthur Korteweg (2018)").

³⁹⁴ See, e.g., Maginn et al. (2007), *supra* note 362. See also Kenneth Emery, *Private Equity Risk and Reward: Assessing the Stale Pricing Problem*, J. Private Equity, Spring 2003, at 43; Arthur Korteweg & Morten Sorensen, *Risk and Return Characteristics of Venture Capital-Backed Entrepreneurial Companies*, 23 Rev. Fin. Stud. 3738 (2010); Gregory W. Brown, Oleg R. Gredil, & Steven N. Kaplan, *Do Private Equity Funds Manipulate Reported Returns?*, 132 J. Fin. Econ. 267 (2019); and Arthur Korteweg, *Risk Adjustment in Private Equity Returns* (Working Paper, 2018).

³⁹⁵ See, e.g., *supra* note 369.

attributes of the affected issuers and investors.

With respect to issuers, we expect the final amendments to facilitate capital formation particularly for certain businesses that have greater uncertainty about the interest in their prospective offerings. The issuers most likely to benefit are small, in development stages, in geographic areas that currently have lower concentrations of accredited investors, or without a wealthy friends and family network.

Small businesses typically do not have access to registered capital markets and commonly rely on personal savings, business profits, home equity loans, and friends and family as initial sources of capital.³⁹⁶ Data on unregistered offerings suggest that they can be an important source of capital for smaller issuers. For example, while the aggregate amount of capital raised through Rule 506 offerings in 2019 (\$1.5 trillion) is large, Commission staff analysis show that the median offering size was only \$1.7 million, indicating that offerings in the Regulation D market typically involve relatively small issues. In addition, recent Commission staff analysis of Regulation D offerings for the 2009–2019 time period find that 63% of non-fund issuers were incorporated for less than three years when they initiated their offering, and among issuers that report size, a majority reported revenues of \$1 million or less,³⁹⁷ which is consistent with these offerings being undertaken by smaller and growth-stage firms. Because a significant share of businesses that establish new funding relationships continue to experience unmet credit need,³⁹⁸ we expect that small issuers that face more challenges in raising external financing may benefit more from expanding the pool of accredited investors.

In particular, small businesses owned by underrepresented minorities may benefit from a larger pool of accredited investors. For example, based on the 2014 Annual Survey of Entrepreneurs, 28.4% of Black entrepreneurs and 17.5% of Hispanic entrepreneurs cited limited access to financial capital as having a negative impact on their firms' profitability.³⁹⁹ Additionally, despite

³⁹⁶ See A Financial System That Creates Economic Opportunities Capital Markets, U.S. Dept. of the Treasury (Oct. 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

³⁹⁷ See DERA Report.

³⁹⁸ See 2015 Staff Report.

³⁹⁹ Alicia Robb, "Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity for U.S. Employer Firms," a study for the Office of Advocacy, U.S. Small Bus. Admin. (Feb. 2018), available at <https://www.sba.gov/sites/>

being more likely to seek new sources of funding, businesses owned by underrepresented minorities were more likely to demonstrate unmet credit needs relative to other groups,⁴⁰⁰ which suggests that these businesses may benefit from amendments intended to facilitate private market capital raising.

Additionally, issuers located in geographic areas with lower concentrations of accredited investors may benefit relatively more from the amendments. For example, household income and net worth tend to be higher in the Northeast and West regions of the United States, which leads to higher concentrations of individual investors that qualify as accredited investors by meeting the financial threshold requirements. Thus, issuers that are outside those regions may currently find it relatively more difficult to identify and solicit accredited investors. Recent research has examined the importance of the pool of accredited investors for the entry of new businesses and employment and finds that geographic areas experiencing a larger reduction in the number of potential accredited investors experienced negative effects on new firm entry and employment levels at small entrants.⁴⁰¹ Thus, because we expect the final amendments to expand the pool of accredited investors, the incremental benefits of this expansion to issuers may be comparatively greater for issuers in geographic areas with currently lower concentrations of accredited investors.⁴⁰²

We expect that issuers that predominately offer and sell securities in registered offerings or that market their offerings to non-accredited investors would be less likely to be affected by the final amendments. We expect the incremental benefits of the proposed amendments also to be smaller for large and well-established issuers with low information asymmetry and a history of public disclosures, as these issuers likely have ready access to accredited investors, especially institutional accredited investors. Similarly, issuers with low costs of proprietary disclosure (e.g., low research and development intensity and limited reliance on proprietary

[default/files/Financing_Patterns_and_Credit_Market_Experiences_report.pdf](https://www.sba.gov/sites/default/files/Financing_Patterns_and_Credit_Market_Experiences_report.pdf).

⁴⁰⁰ *Id.*

⁴⁰¹ See Lindsey & Stein (2019). This study examines the effects on angel finance stemming from the Dodd-Frank Act's elimination of the value of the primary residence in the determination of net worth for purposes of accredited investor status.

⁴⁰² We do not have access to detailed data on entities and individuals that would allow us to estimate the distribution of newly qualified accredited investors by region.

technology) may be less likely to benefit from the final amendments as they may be less reliant on exempt offerings.

With respect to investors, we expect the benefits and costs of the final amendments to be most immediately realized by new entrants to the pool of accredited investors, particularly entities that are not included in the current accredited investor definition and individuals that have professional certifications that do not meet the current income and net worth thresholds. We also expect that providing additional measures of financial sophistication, other than personal wealth, could expand investment opportunities for individual investors in geographic regions with lower levels of income and net worth.

6. Efficiency, Competition, and Capital Formation

The anticipated impacts of the final amendments on efficiency, competition, and capital formation are discussed throughout this section and elsewhere in this release. The following discussion highlights several such impacts.

As discussed above, we expect there will be efficiency gains from the final amendments in the process for raising capital, such as increased ease for issuers of verifying accredited investor status, improved ability of issuers to gather valuable information about investor interest before a potential registered offering, and potentially decreased investor demands for liquidity discounts in some unregistered offerings.⁴⁰³ Such efficiency gains will improve the overall allocative efficiency of the securities markets. In addition, if the newly eligible accredited investors and qualified institutional buyers under the final amendments bring new and uncorrelated information signals to the market (e.g., because of their specialized knowledge and skills), it could improve the price discovery process and make the market for private offerings more efficient. The increased pool of accredited investors and qualified institutional buyers could also enhance competition among investors in the market for private offerings, thus reducing the cost of capital for issuers in that market and improving allocative efficiency.

Additionally, as discussed above, expanding the accredited investor definition to include knowledgeable employees of a private fund could lead to better alignment between private funds and investors. The improved alignment could enable private funds to perform investment services more

efficiently and effectively, thus potentially improving investor protection and market efficiency over the long term.

Several commenters expressed concerns that expanding the definition of accredited investor would serve to promote the market for private offerings at the expense of the market for public offerings, which they expect to cause harm to investors by exposing them to riskier and more illiquid investments.⁴⁰⁴ Some commenters further stated that a shift of capital raising from public to private markets could potentially lead to a reduction in the allocative efficiency of capital in the economy, for example, by worsening the overall information and governance environment for investment and impairing price discovery.⁴⁰⁵ We acknowledge that expanding the pool of accredited investors may increase the availability of capital to private firms, which could allow them to stay private longer, thus reducing the number of companies going public. Less reliance on public markets to raise capital could have further implications for informational efficiency—to the extent that an efficient market incorporates firm-specific information quickly and correctly into asset prices, such an expansion could reduce the efficiency of public markets if there are fewer companies making disclosures into those markets. There could also be an increase in agency costs from less reliance in public markets, as minority shareholders may have less protection in private offerings, as discussed above.⁴⁰⁶

However, the extent of substitution between private and public securities is not well established. For example, although some academic studies suggest that the expanding role of private markets has contributed to the decline in the number of public companies in the U.S.,⁴⁰⁷ other studies have focused on the increased flexibility to deregister provided by recent U.S. regulatory reforms.⁴⁰⁸ Yet other studies note the

⁴⁰⁴ See, e.g., CFA Letter (stating that “[a]s their already expansive ability to raise capital in private markets is further expanded, companies will have even less reason than they do today to go public, further eroding our already shrinking public markets”); Healthy Markets Letter; NASAA Letter; and letter from Center for American Progress dated May 27, 2020 (“CAP Letter”).

⁴⁰⁵ See, e.g., Healthy Markets Letter; NASAA Letter; and CAP Letter.

⁴⁰⁶ See discussion *supra* in Section VI.C.4.

⁴⁰⁷ See Ewens & Farre-Mensa (2019), *supra* note 360, and Craig Doidge et al., *Eclipse of the Public Corporation or Eclipse of the Public Markets?*, J. Applied Corp. Fin., Winter 2018, at 8.

⁴⁰⁸ See Nuno Fernandes, Ugur Lel, & Darius P. Miller, *Escape from New York: The market impact of loosening disclosure requirements*, 95 J. Fin.

cyclical nature of offering activity more generally.⁴⁰⁹ We do not expect the final amendments’ effect on the private-public choice to be significant, as there are a number of other, more relevant factors (e.g., liquidity, cost of capital, ownership structure, compliance costs, valuations) that an issuer would consider when determining to go public or stay private.

The final amendments will expand the pool of accredited investors and qualified institutional buyers beyond the current baseline. As discussed above, we expect that the increased pool of accredited investors and qualified institutional buyers could result in increased amounts of capital available to private issuers and a lower cost of capital, thus potentially increasing capital formation, primarily for issuers with limited access to capital, such as ones that are small, in early development stages, or in geographic areas or communities that currently have lower concentrations of accredited investors.⁴¹⁰

7. Alternatives

In this section, we evaluate reasonable alternatives to the final amendments.

a. Inflation Adjustment of Financial Thresholds

The current accredited investor definition uses bright line income and net worth thresholds to identify natural persons as accredited investors. The Commission established the \$200,000 individual income and \$1 million net worth threshold in 1982 and the \$300,000 joint income threshold in 1988 and has not updated them since, with the exception of amending the net worth standard to exclude the value of the investor’s primary residence in 2011. In the Proposing Release, the Commission used data from the SCF to estimate that the number of U.S. households that qualify as accredited investors has grown from approximately 2% of the population of U.S. households in 1983 to 13% in 2019 as a result of inflation.⁴¹¹ Several commenters expressed a concern that because there has been a substantial growth in the

Econ. 2 (2010) (focusing on “Rule 12h–6, which has made it easier for foreign firms to deregister with the SEC and thereby terminate their U.S. disclosure obligations”) and Craig Doidge et al., *Why Do Foreign Firms Leave U.S. Equity Markets?*, 65 J. Fin. 4, 1507–1553.

⁴⁰⁹ See, e.g., Michelle Lowry, *Why does IPO Volume fluctuate so much?*, 67 J. Fin. Econ. 1 (2003), 3–40; Aydoğan Altı, *IPO Market Timing*, 18 Rev. Fin. Stud. 3 (2005), 1105–1138; and Chris Yung et al., *Cycles in the IPO Market*, 89 J. Fin. Econ. 1 (2008), 192–208.

⁴¹⁰ See *supra* section VI.C.1.b.

⁴¹¹ See Proposing Release at 2593.

⁴⁰³ See *supra* Sections VI.C.1.a and VI.C.1.c.

number of accredited investors through inflation alone, many households currently qualifying as accredited investors in the commenters' view are neither financially sophisticated enough nor wealthy enough to be exposed to the risk of exempt offerings.⁴¹² Because of this concern, some commenters suggested that we should adjust the bright-line income and wealth thresholds upwards and/or index them to inflation going forward.⁴¹³ However, other commenters were in favor of leaving the thresholds at current levels,⁴¹⁴ or supported lowering the thresholds.⁴¹⁵

We considered increasing the individual income thresholds from \$200,000 to \$538,000 and the net worth threshold from \$1 million to \$2.7 million to reflect the impact of inflation since 1982. Because keeping the financial thresholds at their initial (1982) levels has over time effectively reduced the level of income or net worth needed to qualify as accredited investors, this alternative could provide further assurance that individuals eligible for accredited investor status are those investors who are able to sustain the risk of loss of investment or fend for themselves without the additional protections provided by registration under the Securities Act.

Using the SCF, we estimate that an immediate catch-up inflation adjustment would shrink the accredited investor pool to 5.3 million households (representing 4.2% of the population of U.S. households) from the current pool of approximately 16 million households (representing 13% of the population of U.S. households). Thus, increasing the individual income and net worth thresholds to reflect the cumulative effects of inflation would greatly reduce the number of natural persons who would qualify as accredited investors. Moreover, an immediate catch-up inflation adjustment would likely reduce the number of accredited investors to a proportionately greater extent in geographic areas with lower levels of income and net worth.

Although such a reduction in the number of individuals that would qualify as accredited investors would potentially increase the likelihood that the remaining individuals can sustain the risk of loss of similarly sized

investments, there would also be potentially significant costs. In particular, adjusting the income and wealth thresholds may reduce private issuers' access to capital and would reduce investors' access to private investment opportunities. As discussed above in Section VI.B, from 2009 to 2019, only between 3.4% and 6.9% of the offerings conducted under Rule 506(b) included non-accredited investors. Significantly reducing the pool of accredited investors through an immediate catch-up inflation adjustment could thus have disruptive effects on capital raising activity in the Regulation D market not justified by the incremental investor protection benefits. Moreover, as discussed in Section II.B., we acknowledge investor protection concerns raised by the wealth test and recognize that in the case of individuals, higher income or net worth does not necessarily correlate to a higher level of financial sophistication. Therefore, it also is unclear that a catch-up inflation adjustment would result in a pool of qualified accredited investors that would on average be more sophisticated than the current pool, and would likely eliminate some currently eligible investors who are sophisticated. However, we also believe that the investor protections provided by the financial thresholds have not been meaningfully weakened over time due to inflation. Specifically, we note that under the 1982 definition, the calculation of net worth included the value of the primary residence, but since 2011, the net worth standard excludes the value of the investor's primary residence.⁴¹⁶

We also considered indexing the financial thresholds in the definition for inflation on a going-forward basis, rounded to the nearest \$10,000 every four years following the effective date of the final rule amendment. This alternative likely would reduce the change in the number of accredited investors relative to the baseline of leaving the thresholds fixed, holding all else constant. Using the 2016 SCF, we estimate that in 2019, had the current wealth and income thresholds been adjusted for inflation since 2015 and 2010, the proportion of U.S. households that would qualify as accredited investors would have been 11.4% and 10.4%, respectively, which is consistent with an inflation adjustment reducing the pool of accredited investors relative

to the baseline. Although indexing on a going-forward basis would be less disruptive to the market for exempt offerings compared to adjusting the thresholds based on inflation since 1982, it would still reduce the potential aggregate capital supply available for exempt offerings going forward compared to the baseline. The potential benefit of this alternative would be that by reducing the future growth of the number of individuals that qualify as accredited investors on the basis on income or net worth, it may reduce the risk of loss for some individuals that may not be able to bear such a risk. However this benefit would be attenuated to the extent individuals that would no longer qualify in the future as accredited investors are financially sophisticated and can bear the risk of loss, and would therefore lose any potential gains from expanded access to private offerings.

In considering whether to modify the accredited investor definition as described above, we also considered allowing issuers' current investors who meet and continue to meet the current accredited investor standards to continue to qualify as accredited investors with respect to future offerings of the securities of issuers in which they are invested at the time of the inflation adjustment. This type of provision could provide protection from investment dilution for current investors who no longer would be accredited investors because of any changes to the definition, assuming the issuer was willing to incur the time and expense to accommodate such an exception. Such a provision could apply to future investments in the same issuer only, and not to future investments in affiliates of the issuer. In either event, there would be administrative and other burdens. Allowing current investors to continue to qualify for certain existing investments would help to mitigate—although it likely would not completely eliminate—the potential disruptive effect on those investors of an immediate catch-up inflation adjustment. Similarly, it could help to mitigate a potential reduction in the capital supply for existing issuers in the Regulation D market in certain cases, such as small businesses.

b. Investment Limits

We considered imposing investment limits for individuals who will become newly eligible accredited investors under the final amendments but who do not meet the current income or net

⁴¹² See e.g., B. Delaplane Letter; CA Attorney General et al. Letter; Better Markets Letter, CFA Letter; and NASAA Letter.

⁴¹³ See e.g., CA Attorney General et al. Letter; CFA Letter; NASAA Letter; and PIABA Letter.

⁴¹⁴ See *supra* notes 228–230 and accompanying text.

⁴¹⁵ See *supra* notes 234 and 235 and accompanying text.

⁴¹⁶ For example, based on analysis of data from the SCF, if the value of the primary residence was still included in the calculation of an investor's net worth, we estimate that approximately 2.5 million (2%) additional households would have qualified as accredited investors in 2019.

worth thresholds.⁴¹⁷ Limiting investment amounts for individuals who do not meet the current income or net worth thresholds could provide protections for those individuals who are less able to bear financial losses. For example, we could have limited investments for such individuals to a percentage of their income or net worth (e.g., 10% of prior year income or 10% of net worth, as applicable, per issuer, in any 12-month period). This alternative, however, would reduce the amount of capital available from these newly eligible accredited investors, make capital formation more difficult, and likely increase the implementation costs associated with verifying an investor's status as an accredited investor and her eligibility to participate in an offering. We also believe the individuals who will become newly eligible to qualify as accredited investors under the final amendments have the financial sophistication to assess investment opportunities and avoid allocating an inappropriately large fraction of their income or wealth in exempt offerings.

c. Geography-Specific Thresholds

Income and net worth levels vary throughout the country, and lower levels of income and net worth do not preclude a relatively high degree of financial sophistication. Therefore, the current financial thresholds likely result in geographic areas with lower average levels of income and net worth having a relatively lower proportion of individuals that qualify as accredited investors even if the same proportion of individuals are financially sophisticated. In turn, this may lead to comparatively reduced access to accredited investors for issuers in such areas, which may negatively affect capital formation. To mitigate a geographically disparate impact of the current uniform financial thresholds, we, as an alternative, could have adopted geography-specific financial thresholds for those areas with lower average levels of income and net worth. Some commenters expressed support for including geography-specific financial thresholds in the definition of accredited investors.⁴¹⁸ However, other commenters were opposed to such an alternative, raising concerns that it would add costly complexities to the accredited investor definition.⁴¹⁹ In particular, for issuers with prospective

accredited investors throughout the country, such an approach could increase the costs of verifying the accredited investor status of those individuals. Given these complexities, we have determined not to adopt this approach at this time.

d. Including Additional Categories of Natural Persons and Entities

We considered as an alternative that the Commission could permit an investor advised by a registered investment adviser or broker-dealer to be deemed an accredited investor. As discussed above, several commenters supported this alternative, suggesting that clients and customers of registered investment advisers and broker dealers would be able to rely on the knowledge and the sophistication of their financial professional to determine whether an investment is appropriate.⁴²⁰ However, several commenters opposed this alternative, based on concerns related to, for example, investor protection, conflict of interests of financial professionals, erosion of public markets, and adverse selection risks.⁴²¹

Including investors advised by registered financial professionals in the definition of accredited investor would significantly expand the number of investors that would have the opportunity to participate in unregistered offerings, as there are many investors advised by a registered investment adviser or broker dealer that do not currently, and would not under the amendments, qualify as accredited investors, leading to a potentially meaningful increase in aggregate capital supply in the market for unregistered offerings. In turn, this could lower capital costs for issuers and promote capital formation. However, there could be significant costs to the newly eligible accredited investors under this alternative. Neither a recommendation by a broker-dealer nor advice by a registered investment adviser is a complete substitute for an investor's own financial sophistication, nor does it ensure that investors have the ability to sustain the risk of loss of investment or fend for themselves. Therefore, the newly eligible accredited investors that would invest in private offerings under this alternative would be more exposed to the risks of not having the investor protections of registration under the Securities Act, and thus more likely to bear the potential costs of private offerings, such as costs related to

illiquidity, information asymmetry and agency costs (including bargaining power when the investor has less money to invest).

As another alternative to the final amendments, we considered permitting individuals with experience investing in exempt offerings to qualify as accredited investors. For example, we could have added a new category to the accredited investor definition that includes individuals who have invested in at least ten private securities offerings, each conducted by a different issuer, under Securities Act Section 4(a)(2), Rule 506(b), or Rule 506(c). Expanding the accredited investor definition to include individuals with relevant investment experience would recognize an objective indication of financial sophistication. These individuals presumably have developed knowledge about the private capital markets, including their inherent risks. This experience may include performing due diligence, negotiating investment terms, and making valuation determinations. This alternative would increase the pool of accredited investors, although by less than the final amendments. At the same time, this alternative could significantly increase the costs of conducting offerings under Regulation D or other exemptions that rely on the accredited investor definition, as verifying an individual's relevant investment experience likely would be difficult.

We also considered permitting certain knowledgeable employees of a non-fund issuer to qualify as accredited investors in securities offerings of that issuer. This would be an expansion of the current definition, which permits directors, executive officers, or general partners of the issuer (or of a general partner of issuer) to qualify as an accredited investor. For example, certain employees that are not executive officers of a company may still have access to the necessary information about that company to make an informed investment in that company's securities. Expanding the accredited investor definition to include certain knowledgeable employees of a non-fund issuer would increase the pool of accredited investors relative to the baseline, and could make it easier for non-fund issuers to raise capital and potentially increase incentive alignments between employees and shareholders. On the other hand, this alternative could reduce investor protections, to the extent that a knowledgeable employee may have information about a company's business operations, but not possess the relevant financial sophistication to assess the company's offerings that a more senior

⁴¹⁷ While some commenters supported investment limits (see *supra* note 76), others did not (see *supra* note 77).

⁴¹⁸ See *supra* note 248.

⁴¹⁹ See *supra* notes 251–253 and accompanying text.

⁴²⁰ See *supra* notes 254–258 and accompanying text.

⁴²¹ See *supra* notes 259–263 and accompanying text.

officer or director or another type of accredited investor would have.

We also considered limiting the additional entity types to the enumerated entity types in Rule 501(a), instead of including all entities that meet an investments-owned test. For example, we could have expanded the enumerated entity types in Rule 501(a) to include additional entity types such as Indian tribes and sovereign wealth funds. Including additional specific entity types to the enumerated entity types in Rule 501(a) would expand the pool of accredited investors relative to the baseline. On the other hand, depending on what type of specific entities this alternative would include, it may result in a smaller number of new institutional accredited investors compared to the final amendments. Also, without an investments-owned test, some of these entities may be more exposed to lower investor protection compared to the final amendments.

Another alternative would be to apply an asset test for the new entities instead of an investments-owned test. An asset test would help to level the playing field among institutional investors and would reduce inefficiencies associated with specific corporate forms that could develop in the future relative to the current baseline. Moreover, an asset test would likely increase the number of new institutional investors that would qualify as accredited investors relative to an investments-owned test, because, all else being equal, we expect more entities to have in excess of \$5 million in assets than would have in excess of \$5 million in investments. At the same time, to the extent that an investments-owned test is a better indicator than an asset test of those investors who have sufficient financial sophistication to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act, this alternative could result in lower levels of market efficiency and investor protection compared to the final amendments.

VII. Paperwork Reduction Act

The amendments do not impose any new “collection of information” requirement, as defined by the Paperwork Reduction Act of 1995,⁴²² nor do they amend any existing filing, reporting, recordkeeping, or disclosure requirements. As discussed above, by expanding the pool of accredited investors, the amendments could facilitate exempt offerings conducted pursuant to Regulation D or Regulation A and/or enable some companies to

defer becoming a public reporting company, which may impact the number of annual responses under associated collections of information.⁴²³ It is difficult to estimate the magnitude of these effects as they would depend on a number of factors. Overall, however, for the reasons discussed in Section VI, we expect any impact on the annual number responses for associated collections of information to be relatively minor, and therefore we are not adjusting the burden estimates for these collections of information at this time. We note, however, that the Commission will reassess the number of responses for these associated collections of information every three years in accordance with the Paperwork Reduction Act⁴²⁴ and will make adjustments, as needed, to reflect any impact from the final amendments.

We requested comment on our assessment that the proposed amendments would not create any new, or revise any existing, collection of information requirement pursuant to the Paperwork Reduction Act. We also requested comment on whether the proposed amendments would impact the number of annual responses for any associated collections of information and, if so, how we should adjust our Paperwork Reduction Act burden estimates to reflect this impact. We did not receive any comments specifically addressing our assessment that the proposed amendments would not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

VIII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”)⁴²⁵ requires us, in promulgating rules under Section 553 of the Administrative Procedure Act,⁴²⁶ to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (“FRFA”) in accordance with Section 604 of the RFA.⁴²⁷ This FRFA relates to amendment to Rules 215 and 501(a) under the Securities Act.⁴²⁸ An Initial

⁴²³ These collections of information include: Form D (3235-0076), Form 1-A (3235-0286), Form 1-K (3235-0720), Form 1-SA (3235-0721), and Form 1-U (3235-0722).

⁴²⁴ 44 U.S.C. 3507(h).

⁴²⁵ 5 U.S.C. 601 *et seq.*

⁴²⁶ 5 U.S.C. 553.

⁴²⁷ 5 U.S.C. 604.

⁴²⁸ Because the changes to Rule 144A of the Securities Act relate to entities that in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity, we do not believe the changes to Rule 144A would have an impact on small entities.

Regulatory Flexibility Analysis (“IRFA”) was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Rules

The primary objective of the amendments to which this FRFA relates is to update and improve the definition of “accredited investor.” The reasons for, and objectives of, the amendments are discussed in more detail in Section II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on all aspects of the IRFA, including the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. We did not receive any comments specifically addressing the IRFA.

We did, however, receive comments from members of the public on matters that could potentially impact small entities. These comments are discussed by topic in the corresponding subsections of Section II above, and we have considered these comments in developing the FRFA.

C. Small Entities Subject to the Amendments

The final amendments will affect some registrants that are small entities. The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”⁴²⁹ For purposes of the RFA, under 17 CFR 230.157, an issuer, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding \$5 million. Under 17 CFR 240.0-10(a), an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.

The amendments allow more investors to qualify as accredited investors, which will permit issuers of all types, including small entities, to offer and sell securities in the private

⁴²² 44 U.S.C. 3501 *et seq.*

⁴²⁹ 5 U.S.C. 601(6).

markets to more investors. As discussed in Section VI.C.5 above, we expect that small businesses owned by underrepresented minorities and issuers located in geographic areas with lower concentrations of accredited investors may particularly benefit from the amendments. Because potentially affected issuers include both reporting and non-reporting companies, we lack data to estimate the number of such issuers that qualify as small issuers that would be eligible to rely on the amendments.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments do not impose any new reporting or recordkeeping requirement, although issuers conducting an unregistered offering involving accredited investors may incur certain compliance burdens, such as the need to file a Form D with the Commission when conducting an offering under the exemptions provided in Regulation D. While small entities will have the option to offer and sell securities to newly qualified accredited investors, they are not required to do so and may continue to comply with existing Commission rules to raise capital. As a result, we do not expect small issuers would seek to offer securities to newly qualified accredited investors unless they determine the benefits of doing so justify any accompanying compliance burdens. We therefore do not expect the amendments to significantly impact reporting, recordkeeping, or other compliance burdens. Small entities choosing to avail themselves of the amendments may seek the advice of legal or accounting professionals in connection with offers and sales to accredited investors. We discuss the economic impact, including the estimated costs and benefits, of the amendments to all issuers, including small entities, in Section VI above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse economic impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
• Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;

- Using performance rather than design standards; and
• Exempting small entities from all or part of the requirements.

As noted above, the amendments do not establish any new reporting, recordkeeping, or compliance requirements for small entities. Small entities are not required to offer and sell securities to newly qualified accredited investors. Accordingly, we do not believe the amendments will impose a significant adverse economic impact on small entities. It is therefore not necessary to exempt small entities from all or part of the amendments or to provide different or simplified compliance requirements for these entities. To the extent that issuers may face challenges verifying an accredited investor's status, the amendments provide issuers, including small entities, with additional ways to meet this verification requirement that are objective and readily verifiable.

IX. Statutory Authority

The amendments contained in this release are adopted under the authority set forth in Sections 2(a)(11), 2(a)(15), 4(a)(1), 4(a)(3)(A), 4(a)(3)(C), 19(a), and 28 of the Securities Act and in Sections 3(a)(5)(B), 3(b), 15(c), 15(g), and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out above, the Commission amends title 17, chapter II of the Code of Federal Regulations, as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

- 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

- 2. Amend § 230.144A by:
■ a. Revising paragraph (a)(1)(i)(C) and (H);
■ b. Removing the period from the end of paragraph (a)(1)(i)(I) and adding in its place “; and”; and
■ c. Adding paragraph (a)(1)(i)(J) and a note to paragraph (a)(1)(i)(J).

The revisions and addition read as follows:

§ 230.144A Private resales of securities to institutions.

- (a) * * *
(1) * * *
(i) * * *

(C) Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958 or any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act;

(H) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, limited liability company, or Massachusetts or similar business trust;

(J) Any institutional accredited investor, as defined in rule 501(a) under the Act (17 CFR 230.501(a)), of a type not listed in paragraphs (a)(1)(i)(A) through (I) or paragraphs (a)(1)(ii) through (vi).

Note 1 to paragraph (a)(1)(i)(J): An entity seeking qualified institutional buyer status under Rule 144A(a)(1)(i)(J) may be formed for the purpose of acquiring the securities being offered under this section.

- 3. Amend § 230.163B by revising paragraph (c)(2) and adding a note to paragraph (c)(2) to read as follows:

§ 230.163B Exemption from section 5(b)(1) and section 5(c) of the Act for certain communications to qualified institutional buyers or institutional accredited investors.

- (c) * * *
(2) Institutions that are accredited investors, as defined in §§ 230.501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12), or (a)(13).

Note 1 to paragraph (c)(2): Though the definition of “family client” from Rule 501(a)(13) includes both natural persons and institutions, only family clients that are institutions may be considered institutional accredited investors.

- 4. Revising § 230.215 to read as follows:

§ 230.215 Accredited investor.

The term accredited investor as used in section 2(a)(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)(ii)) shall have the same meaning as the

definition of that term in rule 501(a) under the Act (17 CFR 230.501(a)).

- 5. Amend § 230.501 by:
 - a. Revising paragraphs (a)(1) and (3);
 - b. Revising paragraph (a)(5) introductory text;
 - c. Adding a note to paragraph (a)(5);
 - d. Revising paragraph (a)(6);
 - e. Removing the word “and” from the end of paragraph (a)(7);
 - f. Removing the period from the end of paragraph (a)(8) and adding in its place a semicolon;
 - g. Adding a note to paragraph (a)(8);
 - h. Adding paragraphs (a)(9) through (13) with notes to paragraphs (a)(9) and (10); and
 - i. Adding paragraph (j).

The revisions and additions read as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the Commission under section 203(l) or (m) of the Investment Advisers Act of 1940; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or

registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

* * * * *

(5) Any natural person whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent, exceeds \$1,000,000;

* * * * *

Note 1 to paragraph (a)(5): For the purposes of calculating joint net worth in this paragraph (a)(5): Joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard of this paragraph (a)(5) does not require that the securities be purchased jointly.

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse or spousal equivalent in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

* * * * *

(8) * * *

Note 1 to paragraph (a)(8): It is permissible to look through various forms of equity ownership to natural persons in determining the accredited investor status of entities under this paragraph (a)(8). If those natural persons are themselves accredited investors, and if all other equity owners of the entity seeking accredited investor status are accredited investors, then this paragraph (a)(8) may be available.

(9) Any entity, of a type not listed in paragraph (a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;

Note 1 to paragraph (a)(9): For the purposes this paragraph (a)(9), “investments” is defined in rule 2a51–1(b) under the Investment Company Act of 1940 (17 CFR 270.2a51–1(b)).

(10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited

investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this paragraph (a)(10), the Commission will consider, among others, the following attributes:

(i) The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;

(ii) The examination or series of examinations is designed to reliably and validly demonstrate an individual’s comprehension and sophistication in the areas of securities and investing;

(iii) Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and

(iv) An indication that an individual holds the certification or designation is either made publicly available by the relevant self-regulatory organization or other industry body or is otherwise independently verifiable;

Note 1 to paragraph (a)(10): The Commission will designate professional certifications or designations or credentials for purposes of this paragraph (a)(10), by order, after notice and an opportunity for public comment. The professional certifications or designations or credentials currently recognized by the Commission as satisfying the above criteria will be posted on the Commission’s website.

(11) Any natural person who is a “knowledgeable employee,” as defined in rule 3c–5(a)(4) under the Investment Company Act of 1940 (17 CFR 270.3c–5(a)(4)), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in section 3 of such act, but for the exclusion provided by either section 3(c)(1) or section 3(c)(7) of such act;

(12) Any “family office,” as defined in rule 202(a)(11)(G)–1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1):

(i) With assets under management in excess of \$5,000,000,

(ii) That is not formed for the specific purpose of acquiring the securities offered, and

(iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(13) Any “family client,” as defined in rule 202(a)(11)(G)–1 under the

Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1)), of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii).

* * * * *

(j) *Spousal equivalent*. The term *spousal equivalent* shall mean a cohabitant occupying a relationship generally equivalent to that of a spouse.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss,

77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 7. Amend § 240.15g-1 by revising paragraph (b), adding a note to paragraph (b), and revising paragraph (c) to read as follows:

§ 240.15g-1 Exemptions for certain transactions.

* * * * *

(b) Transactions in which the customer is an institutional accredited investor, as defined in 17 CFR

230.501(a)(1), (2), (3), (7), (8), (9), (12), or (13).

Note 1 to paragraph (b): Though the definition of “family client” from rule 501(a)(13) includes both natural persons and institutions, only family clients that are institutions may be considered institutional accredited investors.

(c) Transactions that meet the requirements of Regulation D (17 CFR 230.500 *et seq.*), or transactions with an issuer not involving any public offering pursuant to section 4(a)(2) of the Securities Act of 1933.

* * * * *

By the Commission.

Dated: August 26, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-19189 Filed 10-8-20; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR PART 721

Significant New Use Rules on Certain Chemical Substances (20–2.5e);
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2020-0131; FRL-10011-86]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (20-2.5e)

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 were the subject of premanufacture notices (PMNs). The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0131, through the Federal eRulemaking Portal at <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.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania

Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: wysong.william@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 provisions 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, which would include 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 November 9, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that

is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for chemical substances that were the subject of PMNs. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of any of these chemical substances for an activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur.

The docket for these proposed SNURs, identified as docket ID number EPA-HQ-OPPT-2020-0131, 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.

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 significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). 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), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, 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. 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, potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four TSCA section 5(a)(2) factors listed in this unit.

The proposed rules include PMN substances that are subject to Orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). The TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs identify significant new uses as any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via

inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL), and includes requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELS as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELS approach for SNURs that are approved by EPA will be required to comply with NCELS provisions that are comparable to those contained in the corresponding TSCA Order for the same chemical substance.

These proposed rules include PMN substances that received "not likely to present an unreasonable risk" determination in TSCA section 5(a)(3)(c). However, during the course of these reviews, EPA identified concerns for certain health and/or environmental risks if the chemicals were not used following the limitations identified by the submitters in the notices. The proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protection measures.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for certain chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance that is identified in this unit as subject to this proposed rule:

- 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 or TSCA Order.
- Effective date of the TSCA Order (if applicable).
- Potentially Useful Information.
- CFR citation assigned in the regulatory text section of the proposed rule.

The chemicals subject to these proposed SNURs are as follows:

PMN Numbers: P-18-241, P-18-244, and P-18-245.

Chemical Names: 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranymethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (P-18-241) (generic); 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranymethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (P-18-244) (generic); 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranymethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formats (salts) (P-18-245) (generic).

CAS Numbers: Not available.

Basis for the action: The PMNs state that the generic (non-confidential) use of the substances will be as additives for automotive coatings. EPA estimated the human health hazard of the chemical substances based on their measured and estimated physical/chemical properties and by comparison with structurally analogous chemical substances. EPA determined environmental hazard for the new chemical substances based on Structural Activity Relationships (SAR) analysis for polycationic polymers. EPA has identified concerns for potential neurotoxicity, blood toxicity, reproductive and developmental toxicity, and moderate environmental hazard if the chemical substances are not manufactured and not used following the limitations identified by the submitters in the notices. This proposed SNUR designates the following circumstances of use as "significant new uses" requiring further review by EPA:

- Use of the PMN substances other than as described in the PMNs.

Potentially useful information: EPA has determined that information about the human health and environmental effects of the PMN substances may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of neurotoxicity, reproductive/developmental toxicity, and aquatic

toxicity testing would help characterize the potential health and environmental effects of the PMN substances.

CFR Citations: 40 CFR 721.11401 (P-18-241), 40 CFR 721.11402 (P-18-244), and 40 CFR 721.11403 (P-18-245).

PMN Numbers: P-16-539, P-18-157, P-18-158, P-18-159, and P-19-33.

Chemical Names: Organic sulfonate compound (generic) (P-16-539), thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic) (P-18-157), sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (generic) (P-18-158), thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (P-18-159), and sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (generic) (P-19-33).

CAS Numbers: Not available.

Effective Date of TSCA Order: January 31, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the substances will be for photolithography (P-16-539, P-18-158, and P-19-33) and as a photosensitizer for photoresist (P-18-158 and P-18-159). Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals (as described in the New Chemical Program's PBT category policy statement (64 FR 60194, November 4, 1999; FRL-6097-7)). EPA estimates that the PMN substances will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, neurotoxicity, lung overload, aquatic toxicity, and reproductive/developmental toxicity. The TSCA Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of any of the PMN substances beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain

testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the Safety Data Sheet (SDS);

4. No modification of the processing of the PMN substances in any way that generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substances only as described in the TSCA Order;

6. No domestic manufacture of the PMN substances (*i.e.*, import only);

7. Import of the PMN substances only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual production volumes listed in the TSCA Order.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citations: 40 CFR 721.11514 (P-16-539), 40 CFR 721.11515 (P-18-157), 40 CFR 721.11516 (P-18-158), 40 CFR 721.11517 (P-18-159), and 40 CFR 721.11518 (P-19-33).

PMN Numbers: P-17-178, P-18-13, P-18-14, P-18-37, P-19-78, P-19-79, P-19-111, P-19-112, P-19-114 and P-19-133.

Chemical Names: Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (generic) (P-17-178), substituted-triphenylsulfonium, inner salt (generic) (P-18-13), sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (generic) (P-18-14), sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (generic) (P-18-37), substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-

yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic) (P-19-78), substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic) (P-19-79), dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic) (P-19-111), substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic) (P-19-112), sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic) (P-19-114), and heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5-), triphenylsulfonium (1:1) (generic) (P-19-133).

CAS Numbers: Not available.

Effective Date of TSCA Order: January 31, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) uses of the substances will be for microlithography for electronic device manufacturing (P-17-178, P-18-13, P-18-14, and P-18-37), polymers for photo resist (P-19-78 and P-19-79), and microlithography for electronic device manufacturing (P-19-78, P-19-79, P-19-111, P-19-112, P-19-114, and P-19-133). Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially PBT chemicals (as described in the New Chemical Program's PBT category policy statement (64 FR 60194, November 4, 1999; FRL-6097-7)). EPA estimates that the PMN substances will persist in the environment more than 2 months and estimates a bioaccumulation factor of

greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, neurotoxicity, lung overload, aquatic toxicity, and reproductive/developmental toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of any of the PMN substances beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;

4. No modification of the processing of the PMN substances in any way that generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substances only as described in the TSCA Order;

6. No domestic manufacture of the PMN substances (*i.e.*, import only);

7. Import of the PMN substances only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual importation volumes listed in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citations: 40 CFR 721.11519 (P-17-178), 40 CFR 721.11520 (P-18-13), 40 CFR 721.11521 (P-18-14), 40 CFR

721.11522 (P-18-37), 40 CFR 721.11523 (P-19-78), 40 CFR 721.11524 (P-19-79), 40 CFR 721.11525 (P-19-111), 40 CFR 721.11526 (P-19-112), 40 CFR 721.11527 (P-19-114), and 40 CFR 721.11528 (P-19-133).

PMN Number: P-18-16.

Chemical Name: Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).

CAS Number: None available.

Effective Date of TSCA Order: February 11, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a photoacid generator (PAG). Based on the physical/chemical properties of the PMN substance, the PMN substance is a potentially PBT chemical (as described in the New Chemical Program’s PBT category policy statement (64 FR 60194, November 4, 1999; FRL-6097-7)). EPA estimates that the PMN substance will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, liver toxicity, neurotoxicity, reproductive/developmental toxicity, and aquatic toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of the PMN substance beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;

4. No modification of the processing of the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substance only as described in the TSCA Order;

6. No domestic manufacture of the PMN substance (*i.e.*, import only);

7. Import of the PMN substance only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual importation volume listed in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citation: 40 CFR 721.11529.

PMN Numbers: P-18-297, P-18-311, P-18-314, and P-18-315.

Chemical Names: Substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (generic) (P-18-297), triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (generic) (P-18-311), substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (generic) (P-18-314), and substituted triarylsulfonium substituted carbopolycyclic carboxylate (generic) (P-18-315).

CAS Numbers: Not available.

Effective Date of TSCA Order: February 4, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the substances will be as components of material for fabrication. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially PBT chemicals (as described in the New Chemical Program’s PBT category policy statement (64 FR 60194, November 4, 1999; FRL-6097-7)). EPA estimates that the PMN substances will persist in the environment more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, neurotoxicity, lung overload, aquatic toxicity, and reproductive/developmental toxicity. The Order was issued under TSCA sections

5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of any of the PMN substances beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;

4. No modification of the processing of the PMN substances in any way that generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substances only as described in the TSCA Order;

6. No domestic manufacture of the PMN substances (*i.e.*, import only);

7. Import of the PMN substances only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual importation volumes listed in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citations: 40 CFR 721.11530 (P-18-297), 40 CFR 721.11531 (P-18-311), 40 CFR 721.11532 (P-18-314), and 40 CFR 721.11533 (P-18-315).

PMN Numbers: P-18-304, P-18-316, P-18-338, P-19-76, P-19-115, and P-19-142.

Chemical Names: Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (generic) (P-18-304),

heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (generic) (P-18-316), sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (P-18-338), sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (generic) (P-19-76), sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (generic) (P-19-115), and heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (generic) (P-19-142).

CAS Numbers: Not available.

Effective Date of TSCA Order: January 30, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the substances will be as ingredients used in the manufacture of photoresist. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially PBT chemicals (as described in the New Chemical Program’s PBT category policy statement (64 FR 60194, November 4, 1999; FRL-6097-7)). EPA estimates that the PMN substances will persist in the environment more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, neurotoxicity, lung overload, aquatic toxicity, and reproductive/developmental toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of any of the PMN substances beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;

4. No modification of the processing of the PMN substances in any way that

generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substances only as described in the PMNs;

6. No domestic manufacture of the PMN substances (*i.e.*, import only);

7. Import of the PMN substances only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual importation volumes listed in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citations: 40 CFR 721.11534 (P-18-304), 40 CFR 721.11535 (P-18-316), 40 CFR 721.11536 (P-18-338), 40 CFR 721.11537 (P-19-76), 40 CFR 721.11538 (P-19-115), and 40 CFR 721.11539 (P-19-142).

PMN Number: P-19-166.

Chemical Name: Triarylsulfonium alkylestersulfonate (generic).

CAS Number: None available.

Effective Date of TSCA Order: February 12, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a photoacid generator (PAG). Based on the physical/chemical properties of the PMN substance, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical (as described in the New Chemical Program’s PBT category at 64 FR 60194; November 1999). EPA estimates that the PMN substance will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on physical/chemical properties and comparison with analogous chemical substances, EPA has also identified concerns for photosensitization, eye corrosion, irritation, acute toxicity, liver toxicity, neurotoxicity, reproductive/developmental toxicity, and aquatic toxicity. The Order was issued under

TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture of the PMN substance beyond the time limits specified in the TSCA Order without submittal to EPA of the results of certain testing described in the Testing section of the TSCA Order;

2. Use of personal protective equipment where there is a potential for dermal exposure;

3. Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;

4. No modification of the processing of the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process;

5. Use of the PMN substance only as described in the TSCA Order;

6. No domestic manufacture of the PMN substance (import only);

7. Import of the PMN substance only in solution, or in any form in sealed containers weighing 5 kilograms or less; and

8. No exceedance of the confidential annual importation volume listed in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful 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 that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the TSCA Order without performing the required Tier I and Tier II testing outlined in the Testing section of the TSCA Order.

CFR Citation: 40 CFR 721.11540.

PMN Numbers: P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, P-19-179, P-19-180, P-19-181, P-19-182, P-19-184, and P-19-187.

Chemical Names: Halogenated alkylbenzoic acid (generic) (P-19-168, P-19-169, P-19-175, P-19-176, P-19-177, P-19-178, and P-19-179), halogenated benzoic acid (P-19-171, P-19-172, and P-19-173), halogenated

sodium benzoate (P-19-180, P-19-181, and P-19-182), and halogenated sodium alkylbenzoate (P-19-184 and P-19-187).

CAS Numbers: Not available.

Effective Date of TSCA Order: January 31, 2020.

Basis for TSCA Order: The PMNs states that the generic (non-confidential) use will be to monitor oil and gas well performance (P-19-180, P-19-181, P-19-182, P-19-184, and P-19-187) and as well performance tracers (P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, and P-19-179). Based on the estimated physical/chemical properties of the PMN substances and comparison with analogous chemical substances, EPA has identified concerns for developmental toxicity and neurotoxicity for all of the PMN substances and additionally irritation to skin, eyes, and respiratory tract for P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, and P-19-179. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the TSCA Order requires:

1. No manufacture (including import), processing, or use of any of the PMN substances other than for the confidential use described in each PMN;

2. Submission to EPA of certain toxicity testing before manufacturing (including import) beyond the confidential cumulative production volumes listed in the Testing Section of the TSCA Order;

3. Use of personal protective equipment where there is a potential for dermal exposure to PMN substances P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, or P-19-179;

4. Use of engineering controls/processes as specified in the TSCA Order;

5. Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure to PMN substances P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, or P-19-179 or compliance with a NCEL of 0.0195 mg/m³ as an 8-hour time-weighted average to prevent inhalation exposure;

6. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS;

7. No manufacture or use of PMN substances P-19-180, P-19-181, P-19-182, P-19-184, or P-19-187 other than in liquid formulations; and

8. No manufacture of the PMN substances P-19-168, P-19-169, P-19-171, P-19-172, P-19-173, P-19-175, P-19-176, P-19-177, P-19-178, or P-19-179 beyond the confidential annual production volume limit specified in the TSCA Order.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the human health effects of the PMN substances may be potentially useful 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 that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye damage, neurotoxicity, reproductive/developmental toxicity, pulmonary effects, and specific target organ toxicity testing may be potentially useful to characterize the human health effects of the PMN substances. Although the TSCA Order does not require these tests, the TSCA Order’s restrictions remain in effect until the TSCA Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citations: 40 CFR 721.11541 (P-19-168), 40 CFR 721.11542 (P-19-169), 40 CFR 721.11543 (P-19-171), 40 CFR 721.11544 (P-19-172), 40 CFR 721.11545 (P-19-173), 40 CFR 721.11546 (P-19-175), 40 CFR 721.11547 (P-19-176), 40 CFR 721.11548 (P-19-177), 40 CFR 721.11549 (P-19-178), 40 CFR 721.11550 (P-19-179), 40 CFR 721.11551 (P-19-180), 40 CFR 721.11552 (P-19-181), 40 CFR 721.11553 (P-19-182), 40 CFR 721.11554 (P-19-184), and 40 CFR 721.11555 (P-19-187).

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for some of the chemical substances that are the subject to these proposed SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of

appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow the TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

During review of the other chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV., EPA identified certain other circumstances of use different from the intended conditions of use identified in the PMNs and determined that those changes could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).
- 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 able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes

that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for 42 of the 45 chemical substances that are the subject of this proposed SNUR, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which would be designated as significant new uses. The identities of all of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates October 9, 2020 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.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tscainventory>.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (e.g., generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(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, TSCA 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 or reasonably ascertainable (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 of this information is provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule 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. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages dialog with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the potentially useful information. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>.

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 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.

- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

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. 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–2020–0131.

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 several 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 Orders 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 activities related to this action have already been approved by OMB under the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This proposed rule does not contain 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 using 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 the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs 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. 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, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a

SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

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

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

This proposed rule 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 proposed rule is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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: September 14, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

PARTS 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

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

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 2. Add §§ 721.11401 through 721.11403 and §§ 721.11514 through 721.11555 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

Sec.

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721.11401 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (generic).

721.11402 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (generic).

721.11403 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formats (salts) (generic).

* * * * *

721.11514 Organic sulfonate compound (generic).

721.11515 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).

721.11516 Sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (generic).

721.11517 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).

721.11518 Sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (generic).

721.11519 Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (generic).

721.11520 Substituted-triphenylsulfonium, inner salt (generic).

721.11521 Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (generic).

721.11522 Sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (generic).

721.11523 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[[2-methyl-1-oxo-2-propen-1-yl]oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[[1-ethenylcyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).

721.11524 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[[2-methyl-1-oxo-2-propen-1-yl]oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).

721.11525 Dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).

721.11526 Substituted heterocyclic onium compound, salt with 1-

(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[[2-methyl-1-oxo-2-propen-1-yl]oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).

721.11527 Sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).

721.11528 Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (generic).

721.11529 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).

721.11530 Substituted, (alkylaromatic)diaromatic salt with trihalo-[[trihaloalkyl]substituted]substituted alkaneamide (generic).

721.11531 Triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (generic).

721.11532 Substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (generic).

721.11533 Substituted triarylsulfonium substituted carbopolycyclic carboxylate (generic).

721.11534 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycyclic dihalo sulfoalkanoate (1:1) (generic).

721.11535 Heteropolycyclic, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (generic).

721.11536 Sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (generic).

721.11537 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (generic).

721.11538 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (generic).

721.11539 Heteropolycyclic, aromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (1:1) (generic).

721.11540 Triarylsulfonium alkylestersulfonate (generic).

721.11541 Halogenated alkylbenzoic acid (generic).

721.11542 Halogenated alkylbenzoic acid (generic).

721.11543 Halogenated benzoic acid (generic).

721.11544 Halogenated benzoic acid (generic).

721.11545 Halogenated benzoic acid (generic).

721.11546 Halogenated alkylbenzoic acid (generic).

721.11547 Halogenated alkylbenzoic acid (generic).

721.11548 Halogenated alkylbenzoic acid (generic).

- 721.11549 Halogenated alkylbenzoic acid (generic).
 721.11550 Halogenated alkylbenzoic acid (generic).
 721.11551 Halogenated sodium benzoate (generic).
 721.11552 Halogenated sodium benzoate (generic).
 721.11553 Halogenated sodium benzoate (generic).
 721.11554 Halogenated sodium alkylbenzoate (generic).
 721.11555 Halogenated sodium alkylbenzoate (generic).

* * * * *

§ 721.11401 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (PMN P-18-241) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

(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.

§ 721.11402 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (PMN P-18-244) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

(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.

§ 721.11403 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formats (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formats (salts) (PMN P-18-245) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a) through (c), and (i) are applicable to manufacturers and processors of these substances.

(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.

* * * * *

§ 721.11514 Organic sulfonate compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as organic sulfonate compound (PMN P-16-539) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is

a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11515 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (PMN P-18-157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage,

specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11516 Sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (PMN P-18-158), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11517 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (PMN P-18-159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11518 Sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (PMN P-19-33) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been

completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11519 Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically

identified as sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (PMN P-17-178) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), and (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions

of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11520 Substituted-triphenylsulfonium, inner salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as substituted-triphenylsulfonium, inner salt (PMN P-18-13) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to

manufacturers and processors of this substance.

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

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

§ 721.11521 Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (PMN P-18-14) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is

a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11522 Sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (PMN P-18-37) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11523 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (PMN P-19-78) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which

persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11524 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene 1-ethenyl-4-[(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-

oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with acenaphthylene 1-ethenyl-4-[(1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (PMN P-19-79) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

(2) *Limitations or revocation of certain modification requirements.* The

provisions of § 721.185 apply to this section.

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

§ 721.11525 Dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (PMN P-19-111) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11526 Substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1^{3,7}]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (PMN P-19-112) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures)

shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11527 Sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (PMN P-19-114) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in

§ 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11528 Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (PMN P-19-133) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section

do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11529 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (PMN P-18-16) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to use or process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11530 Substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (PMN P-18-297) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

(b) *Specific requirements.* The provision of subpart A of this part apply

to this section except as modified by this paragraph (b).

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

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

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

§ 721.11531 Triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (PMN P-18-311) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless

in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11532 Substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (PMN P-18-314) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin

sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11533 Substituted triarylsulfonium substituted carbopolycyclic carboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted triarylsulfonium substituted carbopolycyclic carboxylate (PMN P-18-315) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11534 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (PMN P-18-304) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.* Requirements as specified in

§ 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11535 Heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (PMN P-18-316) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after

they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11536 Sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically

identified as sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (PMN P-18-338) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions

of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11537 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (PMN P-19-76) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

(b) *Specific requirements.* The provision of subpart A of this part apply

to this section except as modified by this paragraph (b).

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

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

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

§ 721.11538 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (PMN P-19-115) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN

substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11539 Heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (PMN P-19-142) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new use is:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements

include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11540 Triarylsulfonium alkylestersulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as triarylsulfonium alkylestersulfonate (PMN P-19-166) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor water surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e), (g)(1)(i), (2)(i) through (iii), and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity.

(iii) *Industrial, commercial, and consumer use.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the PMN substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to use or process the PMN substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the PMN substance longer than 18 months.

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

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

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

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

§ 721.11541 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-168) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For

purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iv), and (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11542 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-169) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions

comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix)(eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11543 Halogenated benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated benzoic acid (PMN P-19-171) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), (3) through (6), and (b), and (c). When determining which persons are

reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix)(eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is

a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11544 Halogenated benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated benzoic acid (PMN P-19-172) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order

for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), (ix)(eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11545 Halogenated benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated benzoic acid (PMN P-19-173) is subject to reporting under this section for the significant

new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix)(eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195

mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11546 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-175) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of

§ 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11547 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-176) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin

sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11548 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-177) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of

§ 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11549 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-178) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11550 Halogenated alkylbenzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated alkylbenzoic acid (PMN P-19-179) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (iv), and (3) through (6), and (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (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 exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.0195 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons who § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (v), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. For purposes of § 721.72(g)(2)(iv), use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/

processes described in the TSCA section 5(e) consent order for the substance.

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

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

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

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

§ 721.11551 Halogenated sodium benzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated sodium benzoate (PMN P-19-180) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/ processes described in the TSCA section 5(e) consent order for the substance. It is a significant new use to manufacture or use the PMN substance other than in liquid formulations.

(b) *Specific requirements.* The provision 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 (f) through (i) are applicable to manufacturers and processors of this substance.

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

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

§ 721.11552 Halogenated sodium benzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated sodium benzoate (PMN P-19-181) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/ processes described in the TSCA section 5(e) consent order for the substance. It is a significant new use to manufacture or use the PMN substance other than in liquid formulations.

(b) *Specific requirements.* The provision 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 (f) through (i) are applicable to manufacturers and processors of this substance.

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

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

§ 721.11553 Halogenated sodium benzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated sodium benzoate (PMN P–19–182) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance. It is a significant new use to manufacture or use the PMN substance other than in liquid formulations.

(b) *Specific requirements.* The provision 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 (f) through (i) are applicable to manufacturers and processors of this substance.

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

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

§ 721.11554 Halogenated sodium alkylbenzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as halogenated sodium alkylbenzoate (PMN P–19–184) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance. It is a significant new use to manufacture or use the PMN substance other than in liquid formulations.

(b) *Specific requirements.* The provision 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 (f) through (i) are applicable to manufacturers and processors of this substance.

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

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

§ 721.11555 Halogenated sodium alkylbenzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as halogenated sodium alkylbenzoate (PMN P–19–187) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (f), (g)(1)(ii) through (iv), (vi), and (ix) (eye and skin irritation), (g)(2)(i) through (iii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1)(i), required human health hazard statements include acute toxicity, skin sensitization, serious eye damage, specific target organ toxicity, neurotoxicity, genetic toxicity, and reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the PMN substance without including the engineering controls/processes described in the TSCA section 5(e) consent order for the substance. It is a significant new use to manufacture or use the PMN substance other than in liquid formulations.

(b) *Specific requirements.* The provision 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 (f) through (i) are applicable to manufacturers and processors of this substance.

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

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

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Part IV

Environmental Protection Agency

40 CFR Part 174

Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs)
Derived From Newer Technologies; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 174**

[EPA-HQ-OPP-2019-0508; FRL-10014-10]

RIN 2070-AK54

Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived From Newer Technologies**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing regulations that would allow for an exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) for certain PIPs that are created in plants using biotechnology, as long as their pesticidal substances are found in plants that are sexually compatible with the recipient plant and meet the proposed exemption criteria, ensuring their safety. The current exemption for PIPs is limited to PIPs moved through conventional breeding. EPA's proposed rule would allow certain PIPs created through biotechnology to also be exempt under existing regulations, in cases where those PIPs pose no greater risk than PIPs that meet EPA safety requirements, and could have otherwise been created through conventional breeding. The proposed rule also includes a process through which developers of PIPs based on sexually compatible plants created through biotechnology submit either a self-determination letter or request for EPA confirmation that their PIP meets the criteria for exemption. For increased flexibility in bringing PIPs to market, a developer can also submit both. EPA anticipates several benefits that may result from exempting these PIPs. These include lower costs from reduced regulatory burden, increased research, development, and commercialization of pest control options for farmers, particularly in minor crops, and reduced use of conventional pesticides which could provide environmental benefits.

DATES: Comments must be received on or before December 8, 2020.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2019-0508, through the *Federal eRulemaking Portal* at <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.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPPDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary***A. Does this action apply to me?*

You may be potentially affected by this action if you are a developer or registrant of a PIP. This proposal also may affect any person or company who might petition the Agency for a tolerance or an exemption from the requirement of a tolerance for any residue of a PIP. 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 action may apply to them:

- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320), *e.g.*, pesticide manufacturers or formulators of pesticide products, importers or any person or company who seeks to register a pesticide or to obtain a tolerance for a pesticide.
- Crop Production (NAICS code 111), *e.g.*, seed companies.
- Colleges, universities, and professional schools (NAICS code 611310), *e.g.*, establishments of higher learning which are engaged in development and marketing of PIPs.
- Research and Development in the Physical, Engineering, and Life Sciences (except Nanobiotechnology) (NAICS code 541714), *e.g.*, biotechnology research and development laboratories or services.

If you have any questions regarding the applicability of this action to a particular entity after reading the regulatory text, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is proposing to exempt qualifying "PIPs based on sexually compatible plants created through biotechnology" from the requirements of FIFRA (except for the adverse effects reporting requirement at 40 CFR 174.71 and a proposed recordkeeping requirement at 40 CFR 174.73), and the residues of those PIPs from section 408 of FFDCA. PIPs are defined at 40 CFR 174.3 as "a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. [The PIP] also includes any inert ingredient contained in the plant or the produce thereof." EPA's proposal identifies a class of PIPs, *i.e.*, "PIPs based on sexually compatible plants created through biotechnology," as those PIPs that are created through biotechnology and in which the pesticidal substance is found in plants that are sexually compatible with the recipient plant (*i.e.*, the engineered plant) and that meet specific safety criteria. Although the amended definition proposed for "sexually compatible" specifically refers to a viable zygote formed through the union of two gametes, for this proposal EPA includes in its exemption also PIPs engineered in plants that are propagated vegetatively (*e.g.*, potatoes and bananas). This approach aligns with the Agency's longstanding approach for exempting PIPs in vegetatively propagated plants created through conventional breeding and is consistent with the existing exemption of PIPs from sexually compatible plants created through conventional breeding. The proposed regulatory text for the exemptions from FIFRA and the FFDCA identifies a number of factors intended to ensure that the resulting PIP only produces a pesticidal substance found in plants that are sexually compatible with the recipient plant and thereby ensuring that these substances do not pose different risks to humans and the environment compared to those present in conventionally bred plants. While EPA believes the possibility of adverse effects from the PIPs proposed for exemption to be highly unlikely, it is important to note that the adverse effects reporting requirement under 40 CFR 174.71 would also apply to those PIPs proposed for exemption, as it does for currently exempt PIPs from sexually compatible plants. This requirement allows EPA to reconsider whether a PIP continues to meet the criteria for exemption upon learning of any adverse effects (*e.g.*, injurious or deleterious

levels in food plants). As described in the preamble of the July 19, 2001 **Federal Register** notice implementing 40 CFR 174.71 (66 FR 37772; July 19, 2001), the reports on human health or the environment alleged to have been caused by the PIP would be made to EPA, but EPA will share such reports with the Food and Drug Administration (FDA), and as such, 40 CFR 174.71 is a means of ensuring that EPA and FDA can address any potential hazard. The proposed rule also includes a process through which developers are required to submit either a letter of self-determination or a request for EPA confirmation that a PIP based on a sexually compatible plant created through biotechnology meets the criteria for exemption.

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

This action is being proposed under the authority of FIFRA section 25 (7 U.S.C. 136w) and FFDCA section 408(e) (21 U.S.C. 346a(e)). FIFRA section 25(a)(1) authorizes EPA to issue regulations to carry out the provisions of FIFRA in accordance with certain procedures prescribed in that section. In addition, FIFRA section 25(b) allows EPA to promulgate regulations to exempt from the requirements of FIFRA any pesticide which the Administrator determines is "of a character which is unnecessary to be subject to [FIFRA] in order to carry out the purposes of [FIFRA]."

FFDCA section 408(e) authorizes EPA to initiate actions to establish tolerances or exemptions for pesticide chemical residues that meet the safety standard. See also the discussion in Unit IV.

D. Why is EPA taking this action?

Many plants, including those used for food, naturally produce substances that have pesticidal properties. Humans have relied on the presence of these substances for millennia to improve resistance in new agricultural and non-agricultural plant varieties by moving these traits between sexually compatible plants through conventional breeding. Because these substances may be at unsafe levels in undomesticated plants, rendering such plants inedible, breeders have developed established procedures to ensure that the substances are kept to safe levels when introduced into plant varieties intended for human consumption. For the purposes of FIFRA, when these substances are introduced intentionally into a plant for a pesticidal purpose, the resulting product is considered a pesticide, and more specifically, a PIP.

In 2001, EPA published exemptions for PIPs moved through conventional breeding at 40 CFR 174.25, "plant-incorporated protectant from sexually incompatible plant," and at 40 CFR 174.508, "pesticidal substance from sexually compatible plant; exemption from the requirement of a tolerance." For these exemptions, EPA defined sexually compatible plants as those for which "a viable zygote is formed only through the union of two gametes through conventional breeding." This includes those plants which can exchange genetic information unrestrictedly with each other through natural processes, such as pollination, and also those that are unable to exchange genetic information freely, but that are closely related enough that techniques employed in conventional breeding can facilitate their interbreeding. It specifically excludes plants developed through biotechnology. At that time, EPA did not exempt PIPs that are created through biotechnology and that are found in sexually compatible plants, but rather issued a supplemental proposal to exempt these PIPs because additional criteria needed to be developed. EPA ultimately withdrew that proposal in 2018 and indicated that, if the Agency were to pursue exemption of PIPs developed through biotechnology in the future, a new proposed rule would be issued (Ref. 1), as it became evident that exemption criteria should be developed given advances in biotechnology tools (see Unit II.C.2.).

Recent advances in biotechnology offer precise means by which genes coding for pesticidal substances can be inserted into a plant genome and allow for engineering of those genes that already exist within a plant. Due to these technical characteristics, PIPs can now be created that are virtually indistinguishable from those created through conventional breeding. EPA was therefore able to develop specific exemption criteria that reflect the precise nature of new technologies. The proposed criteria are intended to identify a group of PIPs that would be exempt from both the requirements of FIFRA, with the exception of the adverse effects reporting requirement (codified at 40 CFR 174.71) and the recordkeeping requirement (proposed at 40 CFR 174.73), and that would also qualify for a tolerance exemption under the FFDCA. These PIPs are created through the use of biotechnology and, given the proposed regulatory criteria, pose no greater risk than the sexually compatible PIPs that are already exempt. EPA refers to this group as

"PIPs based on sexually compatible plants created through biotechnology." The Agency's findings, including an assessment of the environmental and human health risks for this proposal, are presented in Unit VI.

EPA's proposal limits the type of plants, and thus the gene pool, that can act as a source of these exempt PIPs to those that are sexually compatible with the recipient plant. EPA is also proposing to amend the definition of "sexually compatible" to state that "a viable zygote *can* be formed through the union of two gametes through conventional breeding." EPA believes that this proposed definition is more biologically correct, because it refers to the ability of two gametes to form a viable zygote. This amendment would also allow for use of the phrase "sexually compatible" in the proposed exemptions. As a housekeeping task, EPA proposes to amend the existing PIPs from sexually compatible plants exemption at 40 CFR 174.25, along with its accompanying exemptions at 40 CFR 174.508 and 174.705, to clarify that those apply only to PIPs created through conventional breeding, thus differentiating them from those PIPs proposed for exemption that are created through biotechnology. These changes are necessary due to the amended definition of "sexually compatible" but will not change implementation of the existing exemption for PIPs from conventional breeding. EPA's proposed exemptions are developed to be consistent with the current exemption at 40 CFR 174.25 for PIPs developed through conventional breeding techniques, and are expected to alleviate regulatory burden for developers that may wish to utilize biotechnology in creating pesticide products that are equivalent to those already exempt under FIFRA and the FFDCA.

On June 11, 2019, Executive Order 13874 (84 FR 27899, June 11, 2019) on "Modernizing the Regulatory Framework for Agricultural Biotechnology Products" was issued. The exemption proposed by EPA in this document is intended to further implement section 4(b) of that Executive Order, which directs the U. S. Department of Agriculture (USDA), EPA, and FDA ("to the extent consistent with law and the principles set forth in section 3" of the order) to "use existing statutory authority, as appropriate, to exempt low-risk products of agricultural biotechnology from undue regulation." Among other things, section 3 of Executive Order 13874 provides that regulatory decisions should be science-based and evidence-based, taking economic factors into account as

appropriate and consistent with applicable law; that regulatory reviews should be conducted in a timely and efficient manner; and that biotechnology regulations should be transparent, predictable, and consistent. As part of the effort to implement Executive Order 13874, the USDA recently revised its regulations at 7 CFR part 340 through a rulemaking entitled “Movement of Certain Genetically Engineered Organisms.” (85 FR 29790, May 18, 2020). In that rule, USDA amended its regulations regarding the movement (importation, interstate movement, and environmental release) of certain genetically engineered organisms in response to advances in genetic engineering and USDA’s understanding of the plant pest risk posed by genetically engineered organisms, thereby reducing the regulatory burden for developers of organisms that are unlikely to pose plant pest risks. Both EPA and USDA use the term “conventional breeding” in their respective rulemakings. However, it should be noted that each Agency uses the term in the context of its own regulations and that the term may have slightly different meanings depending on context.

The process for exemption under both the EPA proposal and USDA’s rule includes the option for developers to self-determine whether their product meets the criteria for exemption. EPA is proposing to require the developer notify EPA of that self-determination with a letter or, in the alternative, to request EPA confirmation that a particular PIP qualifies for exemption (developers may also submit both a self-determination letter and a confirmation request). Because developers of exempted PIPs will still be subject to FIFRA’s adverse effects reporting requirement and the recordkeeping requirement that is part of EPA’s proposed rule, EPA believes it is appropriate to require submission of a self-determination letter or a confirmation request in order to enable EPA to monitor compliance with EPA’s regulations and to take action to avoid adverse health impacts, if necessary.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental impacts of the proposed exemptions in the document entitled “Cost Analysis of the Proposed Rule Exempting Certain Plant-Incorporated Protectants (PIPs) from Registration” (Ref. 2), which is available in the docket, discussed in greater detail in Unit VI.A., and is briefly summarized here.

1. Benefits of the Proposed Exemptions

The rule is estimated to reduce overall registration costs to developers of PIPs based on sexually compatible plants created through biotechnology, and the cost savings per product are approximately \$444,000–\$459,000. Of the entities likely to develop PIPs based on sexually compatible plants created through biotechnology, EPA currently estimates that approximately 80% are small entities. These cost savings would be realized as EPA approval of new active ingredients are sought. The proposed exemption of PIPs based on sexually compatible plants created through biotechnology is likely to remove a potential barrier to market entry for small entities.

2. Costs of the Proposed Exemptions

In the proposed rule, for a PIP to be exempt, a developer would be required to notify EPA through a self-determination letter or through a request for EPA confirmation that the PIP meets the exemption criteria. The proposed rule would also require that a developer maintain documents supporting its determination. Developer costs pertaining to the required exemption eligibility determination process and recordkeeping are estimated in the Agency cost analysis for the proposed rule. These costs are representative of developer labor and laboratory costs that would be required to generate the necessary information and data.

The developer cost of the exemption eligibility determination process is expected to be less than what would otherwise be required of a developer to obtain a registration. The cost analysis developed by the Agency is an overall cost reduction for developers of these types of PIPs. Adverse effects due to aggregate exposure to residues of pesticidal substances from PIPs based on sexually compatible plants created through biotechnology through the dietary, non-food oral, dermal and inhalation routes are highly unlikely, as the exemption eligibility determination process requires that the developer certify that the PIP meets the exemption criteria.

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

1. Submitting CBI

Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within

the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

A. What are Plant-Incorporated Protectants (PIPs)?

Through natural evolutionary processes, plants develop mechanisms to resist pests. The mechanisms of resistance can be varied, including, for example, the production of metabolites that have toxic properties, biochemical cascades resulting in localized necrosis of plant tissue, or the production of substances in response to pest attack (Ref. 3). Humans have for approximately 10,000 years selected and bred certain plants for food, feed, and fiber, and a frequently selected characteristic has been the ability to resist pests (Ref. 4). When humans intend to use substances involved in these mechanisms in plants for “preventing, destroying, repelling, or mitigating any pest,” the substances fall into the FIFRA definition of pesticide, regardless of whether the pesticidal capability evolved in the plant, or was introduced by conventional breeding or through the techniques of biotechnology.

A PIP is defined as “pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof” (40 CFR 174.3). For example, scientists can take the gene encoding for a pesticidal protein from a wild relative of corn and introduce the gene into another corn plant’s genetic material. The plant then manufactures the pesticidal protein that kills the pest when the pest feeds on the plant. The genetic material necessary for the production of such a pesticidal substance also meets the FIFRA statutory definition of a pesticide, because such genetic material is introduced into the plant with the intent of ultimately producing a pesticidal effect. For transgenic PIPs, the

relationship between the genetic material, the pesticidal substance, and the pesticidal effect has typically been linear (*i.e.*, the genetic material inserted into the plant directly produces the pesticidal substance that confers the pesticidal effect). However, PIPs found in conventionally bred plants and their wild relatives can introduce additional biological complexity. For example, as described in the 2001 preamble (66 FR 37772; July 19, 2001), a PIP can encompass genetic material encoding an enzyme that ultimately leads to the production of the pesticidal substance (*e.g.*, solanine). PIPs can also include traits intended for a pesticidal purpose that result from the loss-of-function of an existing plant gene where, for example, the inactivation of a gene coding for a plant receptor protein confers disease resistance. It is important to clarify that EPA regulates the modified genetic material that confers the loss-of-function trait as the pesticidal substance which is consistent with both the 1994 proposed rule preamble (59 FR 60496; November 23, 1994) and the 2001 final rule preamble (66 FR 37772; July 19, 2001) promulgating 40 CFR 174. EPA is requesting comment on whether a clarifying exemption specific to loss-of-function traits would be helpful (Unit VII.E.), although EPA considers these traits to be included under the current exemption at 40 CFR 174.25 and the proposed exemption at 40 CFR 174.26. For the sake of clarity, although the genetic material meets the statutory definition of a pesticidal substance under FIFRA, in this preamble EPA uses “pesticidal substance” to mean a protein or other substance produced from genetic material that has pesticidal properties as per the definition at 40 CFR 174.3.

Although the PIP is regulated by EPA, the plant containing a PIP is not regulated by EPA. Additionally, many types of traits can be engineered into plants, but only those intended for a pesticidal purpose are PIPs. EPA does not regulate non-pesticidal traits under FIFRA or the FFDCA, or any other federal statutes. For example, EPA does not regulate traits introduced into a plant using biotechnology that enhance vitamin C content for nutritional purposes. Food from such a plant variety would be regulated by FDA.

B. How are PIPs regulated?

1. By EPA

Because PIPs are pesticides, they are regulated under FIFRA and, to the extent necessary, FFDCA section 408. Under FIFRA, unless there is an

applicable exemption, EPA is required to register PIPs so they may lawfully be sold and distributed. EPA evaluates each PIP application to determine whether its proposed use would cause unreasonable adverse effects on the environment. To avoid potential unreasonable adverse effects, the Agency may impose (and has imposed) terms and conditions on registration of PIPs (*e.g.*, conditions to slow insect resistance). Additionally, EPA has the authority to take enforcement action with respect to any violations of activities subject to FIFRA. Under the FFDCA, EPA has established exemptions from the requirement of a tolerance for residues of PIPs in food. EPA evaluates each PIP to determine whether exposure to the residue of that PIP in or on food/feed is safe (*i.e.*, there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide, which includes all anticipated dietary exposures and all other exposures for which there is reliable information).

2. By Other Federal Agencies

EPA is part of an interagency effort to improve, clarify, and streamline the regulation of biotechnology, including the regulation of plants developed using biotechnology that includes oversight by the USDA, FDA, and EPA. This approach was articulated by the White House Office of Science and Technology Policy in a policy statement in 1986 (51 FR 23302; June 26, 1986) and updated most recently in 2017 (Ref. 5). This document is known as the Coordinated Framework for the Regulation of Biotechnology. EPA is the federal agency primarily responsible for the regulation of pesticides. In fulfilling this mission, EPA works closely with the USDA, which has responsibilities under the Plant Protection Act, and the FDA, which has responsibilities under the FFDCA, including the enforcement of tolerances set by EPA under the FFDCA. EPA, USDA, and FDA consult and exchange information when such consultation is helpful in resolving safety questions. In addition to the Coordinated Framework, Executive Order 13874 requires EPA, FDA, and USDA to further coordinate their activities with regard to agricultural biotechnology. The PIPs that EPA is proposing to exempt are also exempted from regulation by USDA under 7 part 340 as revised by USDA’s recently issued final rule titled “Movement of Certain Genetically Engineered Organisms.” (85 FR 29790, 29791–92, May 18, 2020).

C. What actions did EPA take to prepare for this proposed rule?

1. Updated Issue Paper

For this proposal, EPA updated an issue paper entitled “Natural Toxicants in Food from Plants” (Ref. 6). This issue paper summarizes and reviews the literature on the most common toxicants found in crop plants and discusses the regulatory status and current testing methods for each of those toxicants. Information from this issue paper was used in the Agency’s safety analysis for residues of PIPs based on sexually compatible plants created through biotechnology in or on food or feed. This document is available in the docket for this rulemaking.

2. Withdrawal of Previous Rule Proposal

In May 2018, the Agency withdrew a proposed rule entitled: “*Plant-Incorporated Protectants (PIPs); Exemption for Those Derived Through Genetic Engineering From Sexually Compatible Plants*” (Ref. 1). The proposed rule was withdrawn because the Agency determined that to exempt PIPs derived through genetic engineering from sexually compatible plants, more scientifically current criteria needed to be developed to reflect advances in genetics and molecular biology since the 2001 proposal. Consequently, EPA indicated that to pursue a future exemption, the Agency would issue a new proposed rule based on the types of products possible to create with newest technology rather than issue a final rule based on previous proposals (Ref. 1). As discussed in Unit VI., in developing this proposal for PIPs based on sexually compatible plants created through biotechnology, the Agency developed criteria that are scientifically more current and that more accurately describe the PIPs that would be exempted. Additionally, because the previous rule was withdrawn, the Agency will not consider comments made on the previous proposal. Therefore, if you believe a comment made regarding previous proposals is relevant to this proposal, you must resubmit the comment for this proposal.

3. Scientific Advisory Committees

The FIFRA Scientific Advisory Panel (SAP) is a body of experts that provide independent scientific advice to EPA on issues related to pesticides, such as the impact to human health or the environment. FIFRA requires that EPA submit any proposed and final rule promulgated under FIFRA section 25(a) to the SAP for comment on the impact of the rule on human health and the

environment. For this proposed rule, EPA requested that the FIFRA SAP waive review of the proposal. In developing the scientific rationales in

this proposal, EPA relied on previously provided advice from the FIFRA SAPs and analyses by the National Research Council of the National Academy of

Science, Engineering and Medicine (Table 1).

TABLE 1—ADVICE SOURCES FOR KEY CONCEPTS TO EXEMPT PIPs BASED ON SEXUALLY COMPATIBLE PLANTS CREATED THROUGH BIOTECHNOLOGY

Concept	Relevance to current proposal	Relevant report
Exemption of PIPs based on sexually compatible plants created through biotechnology.	Establishes the overall scope of the exemption. PIP would be developed by engineering a plant's genetic material to result in a PIP that could otherwise be found in the gene pool of the plant itself, <i>e.g.</i> , in other varieties of the crop plant or in a sexually compatible relative. This scope should result in no novel dietary or environmental exposures.	FIFRA SAP 1992, 1993, 1994; NRC 2000. (Ref. 7, 8, 9, 10).
Criteria limiting the types of possible modifications introduced into a PIP in the plant.	Establishes how much a gene could be modified (<i>e.g.</i> , through truncations, deletions, or point mutations) while still retaining scientific support for the idea that humans have consumed the products of such genes for generations and that products of such modifications present no new dietary exposures.	FIFRA SAP 2004, https://archive.epa.gov/scipoly/sap/meetings/web/html/101304_mtg.html . FIFRA SAP 2005, https://archive.epa.gov/scipoly/sap/meetings/web/html/120605_mtg.html .
Introduction of a gene isolated from a plant in the same gene pool as the recipient plant.	Establishes criteria to ensure that any introduced gene is part of the genetic diversity found in plants that are sexually compatible with the recipient plant.	FIFRA SAP 1992, 1993, 1994; NRC 2000. (Ref. 7, 8, 9, 10).
Ensuring expression profile falls within the gene pool of the plant and plants that are sexually compatible with the plant.	Establishes criteria to ensure that any substance expressed from the modified genetic material is not expressed at higher levels, in different tissues, or at different developmental stages than seen in plants that are sexually compatible with the recipient plant.	FIFRA SAP 1993, 1994; NRC 2000. (Ref. 7, 9, 10).
Precision associated with newly developed techniques of genetic engineering, <i>e.g.</i> , allowing genes present in the plant to be edited.	Establishes criteria to ensure that only precise modifications are introduced into the modified plant— <i>e.g.</i> , modifications of regulatory regions, allelic substitutions, introduction only of genes that falls within the genetic diversity found in plants that are sexually compatible with the recipient plant.	NRC 2004; NASEM 2016, 2017. (Ref. 4, 11, 12).
Exemption eligibility determination process	Establishes streamlined procedures for developers to notify EPA of a PIP that qualifies for exemption.	NRC 2004; NASEM 2017. (Ref. 11, 12).

Two scientific advisory committees, the FIFRA SAP and the Biotechnology Science Advisory Committee (BSAC), a sister committee of equal stature later merged into the FIFRA SAP, offered advice that forms the foundation of EPA's current approach to PIPs. The Agency's 2001 final rule exempting PIPs from sexually compatible plants created through conventional breeding (40 CFR 174.25) and proposed exemptions (under both FIFRA and the FFDCA) for PIPs from sexually compatible plants derived through genetic engineering (see Unit II.C.2.) are based on advice from the FIFRA SAP.

The proposed exemptions in this document, are similarly based on advice provided by the FIFRA SAP, as the 1992, 1993, and 1994 FIFRA SAP reviews did not distinguish between PIPs moved among sexually compatible plants through conventional breeding

and those moved through genetic engineering. Taking that advice into account, along with additional advice from NASEM reports in 2000, 2004, 2016, and 2017, this proposal describes the criteria that PIPs based on sexually compatible plants created through biotechnology, must meet to qualify for the proposed exemption. In response to the Agency's 1994 proposal to exempt PIPs from sexually compatible plants derived through genetic engineering, NASEM pointed out in its report in 2000 that the Agency's proposed language would exempt genetic material moved among plants in sexually compatible populations through the use of biotechnology without taking into consideration whether the moved genetic material would be expressed in the same pattern and at the same levels as occurs naturally in the plant (Ref. 10 at p. 129). This directly led to the

Agency incorporating a criterion addressing expression levels and pattern in the proposed exemption requirements set out in this document. In addition to the advice from the 1992, 1993, and 1994 FIFRA SAPs, EPA received additional advice from expert groups on scientific topics relevant to the current PIP proposed rule including, but not limited to, the 2004 and 2005 FIFRA SAPs that discussed how much a gene could be modified (*e.g.*, through truncations, deletions, or point mutations) while still retaining scientific support for the conclusion that humans have consumed the products of such genes for generations and that products of such modifications present no new dietary exposures; and several reports from NASEM in 2004, 2016, and 2017 that describe the precision of modifications that can be

achieved using new technologies for genetic engineering (Ref. 4, 11, 12).

The proposal in this document also describes an exemption eligibility determination process in which a developer must notify the Agency through either a self-determination letter or a request for EPA confirmation that the PIP meets the exemption criteria. For additional flexibility, EPA also proposes to allow a developer to submit both a self-determination letter and request for EPA confirmation, should they so choose. This proposed set of options takes into account advice from two reports by NASEM (Ref. 10, 12).

4. Stakeholder Engagement

EPA has participated in domestic and international events relevant to the proposed exemptions, all of which provided opportunities to engage with the regulated and research communities, the public, and other U.S. government agencies. Recent conferences and workshops include: Genome Editing—Putting Together the Pieces 2018; 2018 OECD Conference on Environmental Health and Safety of Applications of Gene Editing; Responsible CRISPR: Genome Engineering Conference 2019; North Carolina State University/ASTA Plant Breeding Workshop 2019; Plant Genomics & Gene Editing Congress: USA 2019; and the 2019 Global Regulatory Workshop on Plant and Animal Biotechnology Innovation. These meetings supported EPA's horizon-scanning efforts for novel PIP products and presented engagement opportunities with the scientific and regulated community. These meetings also provided opportunities to develop practical knowledge of techniques and technology used in plant breeding and genetic engineering, which supported development of exemption criteria and rationale for assessing risks of PIPs created using biotechnology. Topics of discussion included plant breeding, technical aspects of biotechnology, and considerations regarding regulation and risk assessment of products.

III. Statutory Authorities and Regulatory Framework

EPA is authorized to regulate pesticides under two federal statutes. FIFRA regulates the sale, distribution, and use of pesticide products through a licensing (registration) scheme. FFDCA, among other things, regulates the safety of pesticide chemical residues in or on food and feed. EPA is proposing these exemptions under FIFRA section 25(b)(2) and FFDCA section 408.

A. What authority does EPA have under FIFRA section 25(b)(2)?

This section of FIFRA allows EPA to exempt, by regulation, any pesticide from some or all of the requirements of FIFRA, if the pesticide is of a character that is unnecessary to be subject to all the requirements of FIFRA in order to carry out the purposes of that Act (7 U.S.C. 136w(b)(2)). EPA interprets FIFRA section 25(b)(2) to authorize EPA to exempt a pesticide or category of pesticides that EPA determines (1) poses a low probability of risk to the environment and (2) is not likely to cause unreasonable adverse effects to the environment even in the absence of regulatory oversight under FIFRA.

In evaluating whether use of the pesticide poses a low probability of risk to the environment, EPA considers the extent of the potential risks caused by use of the pesticide to the environment, including humans, animals, plants, water, air, and land. Potential risks to humans include dietary risks (which are assessed under the safety standard of the FFDCA section 408) and non-dietary risks, such as those resulting from occupational or residential exposure to the pesticide. EPA will not exempt pesticides under FIFRA section 25(b)(2) that fail to meet the required low probability of risk.

In evaluating whether the use of a pesticide is likely to cause unreasonable adverse effects on the environment even in the absence of regulatory oversight under FIFRA, EPA balances potential risks to human health and the environment from use of the pesticide against the potential benefits associated with its use. In balancing risks and benefits, EPA considers the economic, social, and environmental costs and benefits of the use of the pesticide.

B. What authority does EPA have under FFDCA section 408?

Under the FFDCA, food or feed containing pesticide residues may be considered adulterated (and subject to seizure if introduced, delivered for introduction, or received in interstate commerce) unless there is a tolerance or an exemption from the requirement of a tolerance in place covering those residues (21 U.S.C. 342(a)(1)(B)). EPA is authorized to establish tolerances (the maximum level) for residues in or on food or establish exemptions from the requirement of a tolerance, if it determines that the tolerance or exemption would be safe (21 U.S.C. 346a(b)(2), (c)(2)). Section 408 of the 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" (21 U.S.C. 346a(c)(2)(A)(ii)). This includes exposure through drinking water, and residential and other indoor uses, but does not include occupational exposure. In addition, FFDCA section 408 requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption 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" (21 U.S.C. 346a(b)(2)(C)(ii)(I) and (c)(2)(B)). FFDCA section 408(b)(2)(D) specifies other general factors EPA must consider in establishing an exemption (21 U.S.C. 346a(b)(2)(D)). In establishing a tolerance or an exemption from the requirement of a tolerance, the FFDCA does not authorize EPA to consider potential benefits associated with use of the pesticide chemical. Although EPA establishes tolerances or exemptions from the requirement of a tolerance under the FFDCA, FDA enforces these tolerances.

C. What is the relationship of FIFRA exemptions to the FFDCA section 408 standard?

EPA uses the FFDCA section 408 safety standard, as described in Unit III.B., in evaluating whether a pesticide used in or on food and feed meets the standard for exemption under FIFRA with respect to human dietary risk. A pesticide in or on food and feed presents a low probability of human dietary risk if it meets the FFDCA section 408 standard for an exemption from the requirement of a tolerance.

Additionally, a determination that a pesticide chemical meets the safety standard of FFDCA section 408(c) may also be relevant to whether a pesticide qualifies for a FIFRA section 25(b)(2) exemption with respect to human health risks arising from other routes of exposure. In determining whether a pesticide chemical residue is safe, EPA must consider "available information regarding the aggregate exposure levels of consumers . . . to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposures from other non-occupational sources" (21 U.S.C. 346a(b)(2)(D)(vi)).

FIFRA, however, does not provide for exemption of a pesticide in or on food

based solely upon consistency with the FFDCa section 408 exemption standard. At a minimum, EPA also must evaluate risks to the environment and risks arising from occupational exposure to humans and determine that such risks meet both exemption criteria (*i.e.*, posing a low probability of risk to the environment and being not likely to cause unreasonable adverse effects to the environment even in the absence of regulatory oversight under FIFRA).

IV. Proposed Regulatory Framework for Exempting PIPs Based on Sexually Compatible Plants Created Through Biotechnology

In 2001, EPA created a regulatory structure at 40 CFR 174.21, for exempting PIPs from the requirements of FIFRA, other than the adverse effects reporting requirement at 40 CFR 174.71. First, the active ingredient of the PIP must meet codified criteria addressing FIFRA requirements listed in 40 CFR part 174, subpart B; these provisions primarily deal with the pesticidal substance of the PIP and the genetic material necessary for production of that substance (40 CFR 174.21(a)). Second, when the PIP is intended to be produced and used in a food or feed crop, an exemption from the requirement of tolerance must be in place for residues of the PIP (40 CFR 174.21(b)). Third, any inert ingredient that is part of the PIP must be exempt under 40 CFR 174.705 (174.21(c)).

EPA is proposing to create an exemption from FIFRA requirements for certain PIPs based on sexually compatible plants created through biotechnology. These PIPs are created through biotechnology and their pesticidal substance is found in plants that are sexually compatible with the recipient plant. To satisfy the requirement of 40 CFR 174.21(a), EPA proposes to create a new section under subpart B for 40 CFR 174.26 containing criteria that an active ingredient of a PIP based on a sexually compatible plant created through biotechnology must meet to qualify for the new exemption.

To meet the condition of 40 CFR 174.21(b), EPA is proposing to exempt from the requirement of a tolerance under the FFDCa residues of PIPs based on sexually compatible plants created through biotechnology that are present in or on food or feed. This exemption and the safety criteria that the residues must meet to qualify for the exemption will be codified in 40 CFR part 174, subpart W with other PIP-related FFDCa exemptions.

Per 40 CFR 174.3, an inert ingredient is defined as “any substance, such as a selectable marker, other than the active

ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.” Additionally, in 2001 EPA stated that “with regard to the enzymes, precursors, or intermediates in biosynthetic pathways necessary for anabolizing the pesticidal substance, EPA at this time considers them to be part of the plant-incorporated protectant because the substance is intended to “ensure the presence of the active ingredient”—*i.e.*, it is an inert ingredient.” EPA is therefore proposing to expand the scope of the existing inert ingredient exemption at 40 CFR 174.705 to include inert ingredients initiated through a modification made using biotechnology, as EPA believes the intermediary substances described in the 2001 quote would be included in this.

Other than these intermediary substances, the Agency does not expect other, more traditional inert ingredients (*e.g.*, a gene coding for herbicide tolerance) in PIPs based on sexually compatible plants created through biotechnology. This is because older methods of biotechnology that have typically been used to create PIPs use a bacterial plasmid vector to incorporate a DNA construct into the genome of the plant. The DNA construct is an artificially constructed segment of nucleic acid consisting of regulatory elements, the gene coding for the active ingredient, and sometimes a gene coding for an inert ingredient. Because the gene coding for the active ingredient and the gene coding for the inert ingredient are located on the same DNA construct and will therefore be incorporated into the plant genome together, the inert ingredient is able to confirm or ensure the presence of the active ingredient. However, newer biotechnology techniques, such as CRISPR, that are precise enough to create PIPs proposed for this exemption do not use DNA constructs in this way. Instead, these newer techniques allow developers to perform targeted edits to existing genes, and do not require the incorporation of inert ingredients in the same way as historically seen in transgenic PIPs. Modifications coding for substances similar to inert ingredients seen in transgenic PIPs (*e.g.*, herbicide resistance) would instead be incorporated into the recipient plant genome independent of the active ingredient. Because newer techniques allow for these events to be introduced

independently, the modification cannot confirm or ensure the presence of the active ingredient. The modification therefore would not meet the definition of an inert ingredient under 40 CFR 174.3 because it is an independent, non-pesticidal trait not regulated under FIFRA. EPA expects that any ingredients intentionally added during the development of PIPs based on sexually compatible plants created through biotechnology that are specific to the production of the active ingredient (*e.g.*, guide RNA, DNA nuclease) would either be transiently transformed or would be removed (*e.g.*, through segregation of the trait) during the breeding process. If these traits have not been removed from the final product the product would not meet the criteria proposed under the new 40 CFR 174.26 and would not qualify for the new exemptions. The Agency requests comment on whether there are any inert ingredients other than the intermediary substances described in the 2001 quote that will remain in the final plant products containing PIPs based on sexually compatible plants created through biotechnology. If inert ingredients other than the intermediary substances described in the 2001 quote are identified in the responses to the previous request, the Agency also requests comment as to whether the inert ingredients in PIPs based on sexually compatible plants created through biotechnology require the proposal of an exemption that would be specific to those created through biotechnology and would allow developer flexibility in the nucleic acid sequence (see Unit VII.A.). EPA is also proposing to add a recordkeeping requirement and exemption eligibility determination process to 40 CFR 174.21 applicable to PIPs based on sexually compatible plants created through biotechnology that would require a developer to notify EPA that the PIP meets the criteria for exemption from the requirements of FIFRA under the conditions of 40 CFR 174.21 and to maintain supporting documentation of its determination. The exemption eligibility determination can be submitted in two, non-mutually exclusive ways: a self-determination letter or a request to EPA for confirmation of the self-determination.

V. Proposed Revisions to the General Provisions (Subpart A)

Provisions that apply to PIPs are codified in 40 CFR part 174, subpart A. EPA is proposing several changes to these general provisions.

A. What are the proposed new definitions?

Definitions that apply to PIPs are codified in 40 CFR part 174, subpart A, and EPA is proposing to add new definitions for “gene,” “native allele,” and “native gene.” Only one term, “gene,” is discussed in this unit. The other proposed definitions are discussed in detail in Unit VI.

EPA is proposing to define “gene” as meaning a “functional unit of heritable genetic material that is comprised of the genetic material necessary for the production of a substance.” All living organisms encode the substances they need to perform their normal metabolic functions in discrete units in their genome, called genes. This includes the pesticidal substances plants produce to defend against pests. Genes are further comprised of several functionally distinct regions within that unit that work in concert to produce the substance that is encoded by the gene’s nucleic acid sequence. The two regions relevant to the criteria proposed to circumscribe PIPs based on sexually compatible plants created through biotechnology are the regulatory and coding regions. Together, they determine the function of a given gene within the plant. The sequence within the regulatory region of a gene determines the amount of substance that is produced and the spatiotemporal pattern of expression within the plant tissues. The coding region, which is the sequence that is ultimately transcribed, determines the identity of the substance that is produced from the gene (*e.g.*, the amino acid sequence of a protein). Because the regulatory and coding regions of a given gene are inherited together as a single unit, they have evolved together over evolutionary time. In proposing the definition of a gene, the Agency clearly identifies and delineates the physical unit of the genetic material within the plant genome that encodes the substance and leads to the production of the pesticidal substance and, in doing so, restricts any genetic modifications made through biotechnology that would fall under the proposed exemption to the coding and regulatory regions. Defining the term “gene” was not necessary in the context of PIPs before this proposed exemption because previous methods employed to create PIPs, such as particle gun transformation, relied on the integration of a genetic construct, which included other genetic sequences in addition to a gene.

B. What is the proposed amendment to the existing definition for “sexually compatible?”

The term “sexually compatible” is currently defined at 40 CFR 174.3 as “when referring to plants, means a viable zygote is formed only through the union of two gametes through conventional breeding.” EPA is proposing to amend the existing definition for “sexually compatible” to instead state “when referring to plants, means a viable zygote can be formed through the union of two gametes through conventional breeding.” EPA believes this amended definition is more in line with the biological definition of sexually compatible, in that being sexually compatible is widely accepted to mean that two organisms are *capable* of forming viable progeny. The amended definition also allows the Agency to use the term “sexually compatible” in the biological sense in the proposed exemption. The proposed clarification to the sexually compatible definition necessitates changes to the existing PIP from sexually compatible plant exemption at 40 CFR 174.25, along with its accompanying exemptions at 40 CFR 174.508 and 174.705; however, these changes do not result in modifications to the existing exemption for PIPs moved through conventional breeding. EPA discusses this proposed clarification in detail in Unit VI.F.

VI. Proposed Exemptions and Exemption Eligibility Determination Process (Subparts B, D, E, and W)

EPA is proposing to create an exemption from FIFRA requirements for certain PIPs based on sexually compatible plants created through biotechnology (described in Unit VI.A.) and to create a companion exemption from the FFDCA section 408 requirement of a tolerance for residues of certain PIPs based on sexually compatible plants created through biotechnology in or on food or feed (described in Unit VI.B.). EPA is also proposing to add a new subpart (subpart E) to 40 CFR part 174 that would codify the procedures and requirements for the new exemption eligibility determination process (described in Unit VI.C.). EPA is proposing a new section in subpart D, 40 CFR part 174.73, that would codify recordkeeping requirements for exemptions (described in Unit VI.D.). To accommodate the exemption eligibility determination process and recordkeeping requirements, EPA is making some clarifying edits to 40 CFR 174.21 as described in Unit VI.E. Finally, EPA is also clarifying the relationship between the proposed

exemptions for PIPs based on sexually compatible plants created through biotechnology and the exemptions currently at 40 CFR 174.25, 174.508, and 174.705 by modifying 174.25, 174.508, and 174.705 as described in Unit VI.F.

A. What is the proposed FIFRA exemption for the active ingredients of PIPs based on sexually compatible plants created through biotechnology?

1. What the Proposed Exemption Covers

EPA currently exempts PIPs from sexually compatible plants as described in 40 CFR 174.25. Because EPA had previously defined sexually compatible plants as including only those plants that create viable progeny through conventional breeding, the current exemption excludes PIPs created through biotechnology, even if they are equivalent to PIPs that could have been developed through conventional breeding. Technological advances surrounding genome editing (*e.g.*, meganucleases, zinc-finger nucleases, transcription activator-like effector nucleases, and CRISPR-Cas nuclease system) allow for targeted, rapid, and precise changes directly to chromosomes of living cells (Ref. 12). These technologies allow for such precise editing of the genome, that the resulting genes can be indistinguishable from those found in a plant created through conventional breeding. Given the recent advances in technology, EPA was able to develop specific criteria proposed in a new section for 40 CFR 174.26 to exempt certain PIPs developed through the use of biotechnology that pose no greater risk than the currently exempt sexually compatible PIPs. The definition of sexually compatible is also proposed to be amended to refer to the ability of two gametes to form a viable zygote and thus be more biologically correct in stating that “a viable zygote *can* be formed through the union of two gametes through conventional breeding.” This amendment allows for use of the phrase “sexually compatible” in the proposed exemption.

The proposed criteria and supporting proposed definitions of “native gene” and “native allele” circumscribe the PIPs based on sexually compatible plants created through biotechnology that would qualify for the new exemption. The proposed criteria and the proposed definitions limit the types of PIPs that would be exempt to those that are found in plants that are sexually compatible with the recipient plant and meet specific safety criteria, thereby resulting in negligible risk of novel exposures. It is important to note that

although the amended definition proposed for “sexually compatible” specifically refers to a viable zygote formed through the union of two gametes, for this proposal EPA includes in its exemption also PIPs engineered in plants that are propagated vegetatively (e.g., potatoes and bananas). This approach aligns with the Agency’s longstanding approach for exempting PIPs in vegetatively propagated plants created through conventional breeding and is consistent with the existing exemption of PIPs from sexually compatible plants created through conventional breeding.

The definition of “native genes” limits the substances eligible for exemption to those found in plants that are sexually compatible with the recipient plant. As genes code for and produce substances, restricting the genes to only those found in plants that are sexually compatible with the recipient plant will limit the PIPs eligible for the new exemption to those found in plants that are sexually compatible with the recipient plant. The term “native” is used in the scientific literature in the context of cisgenes (e.g., a native promoter is a promoter endogenous to that gene). However, the Agency seeks comment on use of the term “native” in the names of “native gene” and “native allele” and associated definitions as the Agency does not mean to imply with the use of the term “native” that genes which originated through conventional breeding techniques like mutagenesis would somehow be excluded from the proposed exemption. It is the Agency’s intention that alleles found in sexually compatible plants that may have been created through conventional breeding would be included in the definition of “native allele” and “native gene.”

Native genes comprising the gene pool of sexually compatible plant populations have been developed through the processes of mutation, selection, and genetic exchange. The proposed exemption captures ongoing diversification within gene pools by including within the proposed criteria a definition for native alleles. The definition of “native allele” is similarly limited to only those variants of native genes that are found in plants that are sexually compatible with the recipient plant.

EPA also proposes to capture additional ongoing diversification within existing native genes through the concept of differentially expressed genes. These are changes to a native gene that result in alterations in the amount of substance that is produced from that gene. An additional restriction

on differentially expressed genes requires that the original pesticidal substance is preserved, which again limits eligible pesticidal substances to only those that are found in plants that are sexually compatible with the recipient plant. Native genes, native alleles, and differentially expressed genes represent the genetic diversity of sexually compatible plants; thus, these criteria limit exempt pesticidal substances of PIPs based on sexually compatible plants created through biotechnology to only those substances that are found in plants that are sexually compatible with the recipient plant.

For agricultural plants, those defined as being sexually compatible would include existing plant cultivars, landraces (i.e., a locally isolated variety of a domesticated plant species adapted to the natural and cultural environment in which it lives), and breeding lines, as well as plant relatives that can breed with crops but are not currently used as agricultural plants. Including nonagricultural relatives in the sexually compatible pool is appropriate, as some traits found in nonagricultural wild relatives of cultivated plants, although not expressed in existing agricultural cultivars, have been accessible in plant breeding by conventional breeding techniques. For example, nonagricultural plant relatives may express defense mechanisms (i.e., pesticidal substances) that have been lost during domestication of crop plants and thus have not been entirely utilized in agricultural varieties.

Plant breeders have for many years been following established practices to ensure safety when moving genes into agricultural varieties from nonagricultural relatives, particularly from wild relatives, with no indication that substances resulting from these genes present higher levels of risk than those from genes moved only amongst agricultural varieties as long as those established practices are diligently followed (Ref. 13, 14, 15, 16). The ability to produce viable offspring is only possible in nature for organisms that possess many traits (and the genetic material encoding them) in common. Therefore, many of the traits present in agricultural plants and their wild relatives are likely to be similar in nature; the fact that the specific substance from the nonagricultural relative may not be found in the agricultural variety today does not mean that breeders do not have the experience and tools to ensure that it will be present in safe levels if transferred to the agricultural variety. Therefore, the likelihood is negligible that the transfer of such a substance via biotechnology

from a nonagricultural relative to an agricultural one would pose a greater risk than if it were transferred through conventional breeding. The same logic defining the sexually compatible gene pool for agricultural crop plants also applies to other plants such as ornamental, turf, and semi-managed plants (e.g., trees).

EPA’s proposed criteria and associated definitions are based on the ability of closely related plants to hybridize and share genetic information. Because the substances produced by native genes and native alleles are present in sexually compatible plants, breeders have experience in ensuring that the substances will be at safe levels. This is also true for differentially expressed genes (i.e., genes with modified regulatory regions) because the proposed exemption criteria require that (a) the substance produced from the genetic material be not different than what was being produced prior to the modification, (b) the expression profile of the pesticidal protein does not exceed the limits seen in the sexually compatible plant population of the recipient plant. Although the proposed criteria allow for the use of biotechnology, the associated definitions are written to intentionally exclude “transgenes,” which can be generally defined as derived from a source organism unable to share genetic material with the recipient plant through breeding. EPA does not consider transgenes to be native to the gene pool or a part of the genetic diversity of the recipient plant. Transgenic traits have been the focus of current PIP registration activities since 1995 (e.g., those derived from the bacterium *Bacillus thuringiensis*), and the registered PIPs generally present novel exposure scenario considerations for the transgenic trait.

2. Proposed Criteria and Associated Definitions

The Agency is proposing to define “native gene” to mean “a gene that is identified in the recipient plant or plants that are sexually compatible with the recipient plant; and has never been derived from a source that is not sexually compatible with the source plant.” The phrase “has never been derived from a source that is not sexually compatible with the source plant” is meant to clarify that a PIP would qualify for the proposed exemption only if the native gene is present in the source plant as a result of conventional breeding. For example, if a bacterial endotoxin (e.g., from the source *Bacillus thuringiensis*) was engineered into plant “A” (the source

plant), this bacterial endotoxin-based PIP would not qualify as a native gene to be used in plant “B” (the recipient plant) under the proposed exemption, even if plant “B” is sexually compatible with plant “A”. This is because while plant “B” and “A” can interbreed, the bacterium *Bacillus thuringiensis* (the source) and plant “A” (the source plant) are not sexually compatible. This proposed limitation on the source of the PIP therefore prevents a developer from claiming that a gene that encodes for a PIP is a “native gene” under the proposed definition when it is not, *i.e.*, when the gene has been derived from a source that is not sexually compatible with the source plant. Given this explanation of the intent behind the phrase “never derived,” EPA seeks comment on whether the use of the phrase in the proposed definition of “native gene” is clear.

“Native allele” means “a variant of a native gene that is identified in the genetic diversity of plants that are sexually compatible with the recipient plant.” This definition is meant to clarify that the native allele must be a variant found in plants that are sexually compatible with the recipient plant, thereby limiting the potential pesticidal substances to those found in that population. By stating that the native allele is a variant of a native gene, the restriction that the genetic material cannot be derived from a source that is not sexually compatible with the source plant also applies to native alleles.

Equally important are two considerations, discussed in detail in the following sections, that are captured by the proposed criteria for 40 CFR 174.26 and that EPA believes together constitute the basis for meeting the FIFRA section 25(b)(2) standard for exemption: the pesticidal substance is found in plants that are sexually compatible with the recipient plant; and limitations on expression profile.

a. The Pesticidal Substance Is Found in Plants That Are Sexually Compatible With the Recipient Plant

The proposed provisions for 40 CFR 174.26(a) delineate the scope of the new exemption for PIPs based on sexually compatible plants created through biotechnology to only include those substances that are found in sexually compatible plants and substances with which plant breeders have experience. The regulatory text identifies two major categories that specify what will qualify as an exempt PIP pesticidal substance: (i) The insertion of new genetic material; and (ii) The modification of existing genetic material. Modifications of existing genetic material are further

broken down into: Modifications resulting in the differential expression of a gene, modifications resulting in a native allele, and modifications resulting in the differential expression of a native allele. The restrictions on the intended insertion or modification, as discussed in this section, ensure that no substance novel to plants that are sexually compatible with the recipient plant is produced.

By limiting the types of modifications permissible to those resulting in a pesticidal substance found in plants that are sexually compatible with the recipient plant (including substances already in the recipient plant), EPA can ensure that no substance novel to plants that are sexually compatible with the recipient plant is produced. This allows the Agency to ensure that PIPs based on sexually compatible plants created through biotechnology can meet the FIFRA section 25(b)(2) exemption standard because the modification would present a low risk of unreasonable adverse effects to humans and the environment due to the history of ensuring safe exposure through conventional breeding to the exempt substance. Criteria specific to the permissible modifications are described as follows.

i. The Insertion of New Genetic Material

For the insertion of new genetic material, 40 CFR 174.26(a)(1) proposes to limit insertions to native genes. EPA finds it important to include a native gene insertion option in its proposed exemption of PIPs based on sexually compatible plants created through biotechnology, because there may be gene variability among sexually compatible plants. For example, plant genomes can be highly variable with the presence or absence of entire genes across different crop lines. If native gene insertion was excluded from the proposed exemption, EPA would be excluding a class of modifications that can be found in sexually compatible plant populations. For native gene insertion, the phrase proposed for 40 CFR 174.26(a)(1), “A native gene is engineered into a non-genic location of the recipient plant genome, resulting in a pesticidal substance identical to the pesticidal substance identified in the source plant,” contains two criteria. First, the phrase “engineered into a non-genic location” is intended to preclude the insertion of the native gene into an existing gene. This is because the insertion of the native gene in the coding region of an existing gene within the recipient plant may then lead to production of a novel substance (*e.g.*, a

partial or modified substance) by the existing gene.

Second, the phrase “resulting in a pesticidal substance identical to the pesticidal substance identified in the source plant” ensures that the substance produced by the inserted native gene does not result in a substance with which breeders have no experience in preventing unsafe exposures. The requirement for an identical substance to be produced, rather than requiring the native gene to be composed of an identical nucleic acid sequence, allows for some flexibility in the nucleic acid sequence of the genetic material inserted into the recipient plant. It is important to allow for this flexibility because many nucleotide variations found within the coding region of the genetic material necessary for the production of a proteinaceous substance are silent, in that they do not result in changes to the amino acid sequence of the encoded protein. Thus, for proteinaceous substances, it is therefore permissible to insert a native gene that is composed of a nucleic acid sequence that is not identical to that found in the source plant so long as the pesticidal substance for which the nucleic acid sequence codes is identical to that identified in the source plant. However, no such flexibility in the modification of the nucleic acid sequence of the coding region is granted for non-proteinaceous substances, *i.e.*, in cases when the genetic material codes for the production of a type of RNA that is not subsequently translated into a protein (*e.g.*, miRNA), as every nucleic acid in the coding region is reflected in the final sequence of the non-proteinaceous substance. For both proteinaceous and non-proteinaceous substances, flexibility is permissible in the nucleotide sequence of the regulatory regions. This allows for modifications to the expression level of the PIP resulting from the native gene insertion, so long as it meets expression profile criterion 174.26(b) as discussed in Unit VI.A.2.b.

ii. The Modification of Existing Genetic Material

Proposed provisions for 40 CFR 174.26(a)(2) describe permissible modifications of existing genetic material and is further delineated into four possible categories: Modifications resulting in the differential expression of a gene, modifications resulting in a native allele, modifications resulting in the differential expression of a native allele, and modifications resulting in the loss-of-function of an existing gene.

(A) Modifications Resulting in the Differential Expression of a Gene

For the first category, the phrase proposed for 40 CFR 174.26(a)(2)(i), “the existing native gene in the recipient plant is modified to alter the amount of pesticidal substance produced without altering the identity of the pesticidal substance produced,” limits the permissible modification in three ways. First, the modification must be made within the existing native gene in the recipient plant. The types of genes that can be modified only include those that have never been derived from sources that are not sexually compatible with the recipient plant; *e.g.*, it is not permissible to adjust the expression level of a *Bt* gene. Second, the permissible modification is limited to changes that result in changes to the amount of pesticidal substance. While the abundance of a substance in a plant is not solely determined by its level of expression (*i.e.*, the amount of messenger RNA produced), it is reasonable to assume that they generally correlate, *e.g.*, reducing the expression of a gene is expected to also reduce the abundance of the substance that is encoded by that gene (Ref. 17).

Third, the phrase “without altering the identity of the pesticidal substance produced” prevents modifications to the coding region of the gene that result in a partial or modified pesticidal substance. By requiring that the identity of the pesticidal substance be preserved, EPA can ensure that the identity of the substance produced by that gene remains the same as it was before the modification. In other words, a novel substance cannot be produced as a result of the modification; the only modification permitted is a change in the expression level of the substance produced by a gene. This position is consistent with the advice of the FIFRA SAP in the October 2004 meeting on “Issues Associated with Deployment of a Type of Plant-Incorporated Protectant (PIP), Specifically Those Based on Plant Viral Coat Proteins (PVCP-PIPs),” which stated that in the context of maintaining a “safe history” assumption, “only changes that affect an expressed protein are of concern and that changes to regulatory and untranslated regions are not relevant.” (FIFRA SAP meeting held October 13–15, 2004, page 44 of minutes, Unit VI.A.3.a., Table 1). The statement that “changes to regulatory and untranslated regions are not relevant,” indicates that modifications to those genetic regions do not result in a novel substance and therefore are not modifications of concern. Additional criteria

surrounding permitted expression profiles are discussed in Unit VI.A.2.b.

(B) Modifications Resulting in a Native Allele

For the second category, the phrase in proposed 40 CFR 174.26(a)(2)(ii) “the genetic material that encodes the substance of the existing native gene is modified to result in a pesticidal substance that is identical to the pesticidal substance encoded by a native allele of that gene,” limits the types of modifications that could qualify for exemption. Like the restriction on differentially expressed genes, modifications to the recipient plant genome resulting in a native allele must be made within the existing native gene in the recipient plant. This criterion is intended to limit modifications solely to a single gene and would therefore exclude from exemption modifications that would affect more than one gene, *e.g.*, those affecting chromosomal structure.

Although EPA recognizes that large-scale changes like translocations may be considered genetic variants, changes that affect the structure of chromosomes can affect many genes along the chromosome and are likely to disrupt or change the substances made by those genes. Insufficient information is available to allow the Agency to *a priori* conclude which structural changes would result in novel exposures, and therefore which changes may or may not result in unreasonable adverse effects. Thus, at this time, the Agency is unable to make a generic risk assessment on the consequences of chromosomal structural modifications and is not proposing an exemption that would allow for changes such as chromosomal inversions, translocations, or rearrangements. This does not preclude the Agency from registering these types of products or proposing an exemption at a later time should information become available that supports a determination of low risk.

The second half of the phrase, “to result in a pesticidal substance that is identical to the pesticidal substance encoded by a native allele of that gene,” is another key limitation applied to native alleles and is based on the same concepts underlying the no novel exposure argument articulated for native genes in Unit VI.A.2.a.i. Briefly, requiring that the pesticidal substance produced in the recipient plant be identical to the substance encoded by the native allele ensures that there will be no novel situations for plant breeders, and therefore no novel exposures. This requirement also allows for more flexibility in the modifications

made to the recipient plant, in a way that restricting the nucleic acid sequence would not. Again, no such flexibility in the modification of the nucleic acid sequence of the coding region is granted for non-proteinaceous substances, *i.e.*, in cases when the genetic material codes for the production of a type of RNA that is not subsequently translated into a protein (*e.g.*, miRNA), as every nucleic acid in the coding region is reflected in the final sequence of the non-proteinaceous substance.

(C) Modifications Resulting in the Differential Expression of a Native Allele

For the third category, proposed 40 CFR 174.26(a)(2)(iii) states, “the existing genetic material is modified pursuant to both (i) and (ii).” This phrase is intended to indicate that it is also acceptable to create a differentially expressed native allele so long as the criteria under proposed 40 CFR 174.26(a)(2)(i) and 174.26(a)(2)(ii) are met.

(D) Modifications Resulting in the Loss of Function of a Gene

For the fourth category, the phrase proposed for 40 CFR 174.26(a)(2)(vi), states “The existing native gene in the recipient plant is modified to lose function through the reduction or elimination of the substance encoded by that gene.” EPA believes a separate exemption category to allow for instances in which the pesticidal trait in the plant is created via the loss-of-function of an existing gene helps clarify that the rule is intended to cover these types of modifications. To that end, EPA specifically uses the term “substance” rather than “pesticidal substance” for this exemption category when referring to the native gene product (*e.g.*, protein). For example, a gene coding for a receptor protein may be modified to result in the loss-of-function of that protein to confer disease resistance. By specifying that the substance must maintain the same identity, EPA therefore prevents the production of modified proteins not previously identified in the gene pool while still allowing for modifications in the coding region that ultimately prevent the production of a protein (*e.g.*, premature termination codon). Additionally, modifications in the regulatory region of a gene would be allowed under the proposed exemption as these do not result in changes to the identity of the substance produced by the genetic material. EPA requests comment on whether an exemption category specific to loss-of-function

traits (rather than including them in proposed 174.26) would be clearer (see Unit VII.E.).

b. Limitations on Expression Profile

The proposed criterion at 40 CFR 174.26(b), “the pesticidal substance is not expressed at higher levels, in different tissues, or at different developmental stages than identified in a plant that is sexually compatible with the recipient plant,” is a key limitation to prevent novel dietary and environmental exposures. The limitation on levels is important because endogenous plant compounds that result in plant resistance to pests can be toxic to mammals or other non-target organisms (Ref. 11). Limiting the expression profile of pesticidal substances to that found in a plant capable of being sexually compatible with the recipient plant ensures that the assumptions used to justify the proposed exemption (specifically, a long history of breeder experience with such substances and situations) support the statutory findings required to exempt PIPs based on sexually compatible plants created through biotechnology. For example, breeders will be able to ensure that modifications that lead to an increase in the expression of a substance are limited to levels accepted in conventional breeding because of their experience with the levels observed in plants that are sexually compatible with the recipient plant. The level of expression of pesticidal substances is expected to vary among sexually compatible plants depending on environmental conditions and due to intrinsic variations in their potential to express a substance (Ref. 17). Variation exists even among plants of the same variety due to different weather and soil condition (Ref. 18). As such, limiting changes in the expression of a pesticidal substance not to exceed levels found within a sexually compatible plant supports meeting the FIFRA section 25(b)(2) exemption standard because such changes do not result in exposure levels not otherwise encountered through conventional breeding.

The proposed phrase also ensures that modifications allowed under the proposed exemption do not result in changes in the expression pattern of pesticidal substances. Specifically, this criterion ensures that pesticidal substances are only expressed in the same plant tissues and at the same developmental stages as what is found in a sexually compatible plant. For example, an insect toxin typically produced in the leaves of a plant would not meet the proposed exemption criterion if the plant is modified to

produce the toxin in the nectar or pollen, as this may result in novel exposure of pollinators to the toxin. To ensure that the exempt PIPs are low risk and meet the FIFRA section 25(b)(2) exemption standard, EPA finds it necessary that pesticidal substances would not exceed expression levels or be expressed in different tissues or at different developmental stages from the exposure encountered among sexually compatible plants.

3. Risk Analysis

EPA considered several factors in determining whether PIPs based on sexually compatible plants created through biotechnology that meet the criteria under proposed 40 CFR 174.26 could be exempted from FIFRA requirements in order to meet the 40 CFR 174.21(a) requirement. That consideration relied upon the large body of knowledge that currently exists on sexually compatible plants and genetic diversity. The factors include: “(1) Low potential for novel exposures; (2) Low potential for levels of PIPs based on sexually compatible plants created through biotechnology to exceed levels found in sexually compatible plants; (3) Low potential for PIPs based on sexually compatible plants created through biotechnology to move from cultivated plants to wild or weedy relatives through gene flow and increase weediness; (4) Low potential for occupational and non-occupational risks to humans; and (5) Low potential for resistance selection pressure posed by PIPs based on sexually compatible plants created through biotechnology to exceed that found in sexually compatible plants.” EPA also evaluated considerations specific to newer biotechnology techniques related to PIPs based on sexually compatible plants created through biotechnology.

In addition to the analyses discussed in this unit for exemption under FIFRA, EPA also performed similar analyses for the proposed tolerance exemption under FFDCA discussed in Unit VI.B. EPA refers readers to the detailed discussions in that unit for information specific to the dietary safety of PIPs based on sexually compatible plants created through biotechnology.

a. Large Body of Knowledge

In the issue paper entitled “FIFRA: Benefit and Environmental Risk Considerations for Inherent Plant-Pesticides” (Ref. 23), EPA describes a large part of the information base on nontarget plants, insects, birds, mammals and other herbivores that the Agency relied on for its evaluation of the potential effects of PIPs based on

sexually compatible plants created through biotechnology on the environment. In addition, to understand the history of exposure of non-target organisms to substances found in nature that are equivalent to PIPs based on sexually compatible plants created through biotechnology, EPA used the large body of literature on the effect on humans of consumption of food from sexually compatible plants generated from epidemiological studies, nutritional assessments, animal model testing and biochemical studies (Ref. 24, 25, 26, 27, 28, 29, 30, 31, 32) to draw conclusions on the potential risk for animal non-targets, including birds and fish, which might consume food containing the PIPs proposed for exemption. Testing in animal models can supply information that is extrapolated to make conclusions on the effect of a substance on humans; similarly, information and conclusions drawn in the dietary risk assessment on the effects on humans can be extrapolated to predict effects on non-human mammals and other animals in an assessment of environmental risk. In addition, there is a long history of humans using foods containing PIPs as food for domesticated and other animals, including birds and fish. EPA relied on this history of exposure and the large literature generated by a century of systematic studies of the constituents of food (Ref. 23) to assess PIPs based on sexually compatible plants created through biotechnology.

EPA also considered scientific knowledge from a number of disciplines, including plant genetics, plant physiology, phytopathology, biochemistry, ecology, evolutionary biology, genomics, and plant breeding. From the disciplines of plant physiology and biochemistry, EPA considered, for example, information on plant metabolism, the production of substances that may have a pesticidal effect, and conditions that may limit the production of such substances (Ref. 33). The Agency also used information from the science of phytopathology to characterize the pest resistance mechanisms in plants in order to understand the types of traits PIPs based on sexually compatible plants created through biotechnology may confer to recipient plants (Ref. 3). The sciences of ecology and evolutionary biology were considered for information on genetic diversity, mutation, and reproductive isolation mechanisms in populations (Ref. 34) to understand the types of genetic changes that are likely to occur when plants interbreed. Plant breeding and genetics were considered to

describe the mechanisms of incompatibility and interbreeding (Ref. 35, 36), which aided EPA in determining when plants are likely to interbreed. Information from genomics and molecular biology were considered to understand the ability of newer biotechnology techniques to create traits equivalent to those found in conventionally bred plants (Ref. 23, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46).

Finally, recommendations from several FIFRA SAPs and NASEM reports were considered in the development of the proposed exemption criteria for PIPs based on sexually compatible plants created through biotechnology, and when describing the types of genetic modifications in the recipient plant that are unlikely to result in novel exposure to humans and the environment (see Table 1 in Unit II.C.3.).

b. Low Potential for Novel Exposure

Given that PIPs based on sexually compatible plants created through biotechnology are intended to represent a subset of substances present in plants that plant breeders have experience with, EPA does not expect novel exposures from the substances involved.

Pesticidal traits, and the genetic material encoding them, have evolved and been developed in plant populations through the processes of mutation, selection, and genetic exchange among sexually compatible species (Ref. 47, 48). The ability to produce viable offspring is only possible for organisms that are genetically similar and possess many traits in common. Traits, and the genetic material encoding them, can be passed through a plant population by breeding. The mixing of genetic material that occurs through breeding results in sexually compatible plants having similar genetic material and similar traits. Due to the mixing of traits by mating, similar exposure scenarios are expected for plants that are capable of being sexually compatible, in other words, substances in sexually compatible plants are expected to be similar and therefore, only substances that plant breeders are already familiar with are expected to be present in sexually compatible plants. This conclusion is consistent with the 1992, 1993, and 1994 FIFRA SAP meetings that indicated that sexually compatible plants are more likely to have a common constitution than unrelated plants and thus movement of genetic material between sexually compatible plants is less likely to lead to novel exposures (Ref. 7, 8, 23).

For agricultural plants, those defined as capable of being sexually compatible would also include existing plant cultivars, landraces, and breeding lines, as well as plant relatives that interbreed with crops but that are not currently used as agricultural plants. Plant breeders have for many years been moving genes into agricultural varieties from nonagricultural relatives with no indication that substances resulting from these genes present higher levels of risk than those from genes moved only amongst agricultural varieties (Ref. 13, 14, 15, 16). Therefore, the likelihood that the inclusion of nonagricultural varieties as potential source plants would pose an increased potential for novel environmental exposures from PIPs based on sexually compatible plants created through biotechnology is low.

If a population of sexually compatible plants normally possesses a pesticidal substance, organisms that encounter plants in that population have likely been exposed to the pesticidal substance in the past, perhaps over multiple generations. These past exposures, particularly if they occur over long periods of time, may lead to a degree of adaptation, or tolerance in the population of organisms exposed to the pesticidal substance (Ref. 49). Relatedly, the proposed exemption would not affect exposure patterns because the proposed criteria require that the pesticidal substance have an expression profile found in sexually compatible plants (e.g., the pesticidal substance is expressed in the same developmental stages or tissues). Any avoidance strategies of nontarget organisms (e.g., avoid eating certain parts of the plant) would still be protective in the case of PIPs based on sexually compatible plants created through biotechnology. Thus, the potential is low that PIPs based on sexually compatible plants created through biotechnology would pose novel exposures for organisms that typically encounter related plants.

Genetic diversity is created over time and EPA proposes to capture some of the ongoing diversification not identified in existing native genes or native alleles through the inclusion of changes resulting in the alteration of the amount of substance produced by existing genes, so long as no novel substance is produced and the substance is not produced in different tissues or at different developmental stages than those found in sexually compatible plants. Modifications that lead to differential expression levels of a substance are not expected to result in levels that exceed the boundaries of the variation found in sexually compatible

plants due to physiological constraints that are related to energy expenditure (further discussed in Unit VI.A.3.c.). Therefore, the potential for novel exposures to occur with the differential expression of existing genes, or the movement of native genes and native alleles among sexually compatible plants, is low, because no substance novel to plants capable of being sexually compatible with the recipient plant will be produced, nor will the substance be found at higher levels, in tissues, or at developmental stages in which it is not currently found.

c. Low Potential for Levels of PIPs Based on Sexually Compatible Plants Created Through Biotechnology To Exceed Levels Found in Sexually Compatible Plants

EPA has evaluated whether there are likely to be quantitative changes in levels of PIPs based on sexually compatible plants created through biotechnology expressed by the recipient plant, such that adverse effects to the environment or to humans might occur (see Unit VI.B. for an analysis on human dietary risk). EPA has determined that the potential of such an event is low because the highest levels of pesticidal substances likely to be expressed with PIPs based on sexually compatible plants created through biotechnology are not likely to result in significantly different environmental exposure levels.

An analysis discussing the likely range of expression of PIPs in sexually compatible plants was presented in an EPA issue paper, entitled: "FIFRA: Benefit and Environmental Risk Considerations for Inherent Plant-Pesticides" (Ref. 23). A summary of the analysis and how it applies to the proposed exemption is presented here. EPA first considered whether any increase in the levels of substances, including PIPs, that plants normally produce is likely to exceed the ranges normally found within and between plant varieties and uncultivated plants. The level of production of such substances normally varies among sexually compatible plants because of differences in potential to express a substance and environmental conditions. Indeed, variation is seen even among plants in the same variety because of differences such as weather and soil condition. For example, one report has shown an 8.3-fold variation in the amount of ascorbic acid in turnip greens depending on the degree of exposure to light (Ref. 18). EPA's proposal would exempt PIPs based on sexually compatible plants created through biotechnology that are not

expressed above the range of variation on the basis that such exposures would not be considered novel. EPA considers that nontarget organisms, such as birds and insect pollinators, that associate with such sexually compatible plant populations have been and are currently being exposed to the upper levels of substances that might be used as PIPs based on sexually compatible plants created through biotechnology.

EPA considered the extent to which any substance can be increased in highly managed plants without unwanted effects on other, desirable characteristics of the plant such as yield or palatability of fruit. In general, breeders balance all of these characteristics in developing marketable plant varieties. Greatly increased levels of any substance, including PIPs based on sexually compatible plants created through biotechnology, generally would only be accomplished at the expense of the expression of other, agriculturally desirable traits due to physiological constraints related to energy expenditure in the plant (Ref. 23). A plant, like any other living organism, has a finite energy budget, and can only harvest so much energy from the environment to allocate to all of its activities; therefore, a significant increase in the production of one substance, like a PIP, would reduce the energy that could be put towards the production of other substances critical to the plant's metabolism. Thus, there are practical considerations that limit the upper expression levels of a PIP based on a sexually compatible plant created through biotechnology to that found in a plant that is sexually compatible with the recipient plant. To codify this principle into regulatory text, EPA is proposing criteria in which the level of expression of the PIP based on a sexually compatible plant created through biotechnology is bound by the upper limit of expression of the pesticidal substance observed in a sexually compatible plant. By limiting the expression of PIPs based on sexually compatible plants created through biotechnology in this way, EPA can ensure that the exposures fall within the normal historical range of exposures with which plant breeders have experience limiting. EPA also considered whether the total expression (*i.e.*, expression of the PIP across all plants capable of producing that PIP) would result in an adverse effect different than that possible through conventional breeding. Because the PIP based on a sexually compatible plant created through biotechnology could have otherwise been created through

conventional breeding, EPA does not expect that the cumulative expression of a PIP based on a sexually compatible plant created through biotechnology would pose a higher risk than what is currently possible through conventional breeding.

The potential for exposure to PIPs is typically lower than for other types of pesticides because PIPs are produced within the living plant and used *in situ* in the plant. Other pesticides, such as conventional chemicals, must be applied to the plant, or near the plant. Because a PIP is produced and used within the plant, physiological constraints limit the amount of pesticidal substance produced by the plant. Moreover, the routes by which other organisms may be exposed to the PIP are typically more limited, *e.g.*, dietary exposure is likely to be the predominant route of exposure; there is a potential for dermal or inhalation exposure, although that likelihood is more limited (see Unit VI.A.3.e. for additional discussion of dermal and inhalation exposure in humans). In addition, PIPs are part of the metabolic cycles of plants, meaning they are biotic and subject to the processes of biodegradation and decay. Furthermore, PIPs are biodegradable to their constituent elements through catabolism by living organisms. Because they are readily degraded, PIPs do not bioconcentrate in the tissues of living organisms (Ref. 50) or persist in the environment. Given these characteristics, the potential for new exposures to occur, beyond direct physical exposures to the plant or plant parts, is limited for PIPs generally, including PIPs based on sexually compatible plants created through biotechnology.

EPA also considered whether variations of expression levels of PIPs based on sexually compatible plants created through biotechnology contained in semi-managed systems (*e.g.*, trees) presented any novel issues for exposure to nontarget organisms (Ref. 23). Semi-managed systems received specific consideration because their semi-managed state can result in exposure to a larger variety of nontarget organisms compared to highly managed row crop systems. For the reasons stated in the preceding paragraphs in this unit, EPA anticipates that for such plants, levels of expression of PIPs based on sexually compatible plants created through biotechnology will continue to fall within the upper limit of expression currently observed for such substances in sexually compatible plants. Therefore, it is anticipated that the levels of PIPs based on sexually

compatible plants created through biotechnology in semi-managed plants would not exceed the levels observed in sexually compatible free-living relatives (Ref. 23).

Finally, while not necessary to support the Agency's low probability of risk determination under FIFRA, EPA did nonetheless consider the role of the plant breeding process in maintaining levels of substances in plants. Plants containing PIPs based on sexually compatible plants created through biotechnology will, as would plants in other development programs, pass through a post-development screening and selection process. During this process, plants with undesired or unexpected traits are identified and eliminated from further development. The development of new plant varieties, whether through conventional breeding or through biotechnology, begins with the production of a large number of plants containing the trait of interest. Plants are cultivated over several propagation cycles in order to identify those plants that inherit the intended phenotype across multiple generations while maintaining desirable agronomic characteristics such as uniform growth characteristics, fertility, and yield (Ref. 22). The screening and selection practices result in the selection of plants intended for commercialization that display desirable behavior, including desired levels of expression of various traits. Historically, these practices have proven to be reliable for ensuring safety and plants containing PIPs based on sexually compatible plants created through biotechnology are expected to also pass through these same screening and selection processes.

In conclusion, in its assessment, EPA considered the potential of variations in expression levels of PIPs based on sexually compatible plants created through biotechnology and whether those variations would present risk. EPA concluded that although variations in PIP expression levels will occur in response to environmental conditions in plants that interbreed, these variances are within exposure levels already encountered. The purpose of EPA's second criterion limiting expression levels to no higher than presently found in plants that are sexually compatible ensures that any exempt PIPs based on sexually compatible plants created through biotechnology would not pose a higher risk than what is currently found through conventionally bred plants. Given the history of safe exposure to those substances, this criterion helps to ensure that exempt PIPs pose a low probability of risk from quantitatively different exposures.

d. Low Potential for PIPs Based on Sexually Compatible Plants Created Through Biotechnology To Move From Cultivated Plants to Wild or Weedy Relatives Through Gene Flow and Increase Weediness

Because PIPs based on sexually compatible plants created through biotechnology are produced and used in the living plant, EPA considered the possibility that the PIP may be transferred by hybridization from the crop plant to a cultivated, wild or weedy relative. A large volume of information is available in the public literature on this possibility and the likelihood of hybridization (Ref. 36, 51, 52, 53, 54, 55). EPA's issue paper entitled "Risk Considerations for Outcrossing and Hybridization" addresses these considerations for PIPs in plants in sexually compatible populations (Ref. 56). As the genes used to create the PIPs proposed for exemption produce the same substances as found in sexually compatible plant populations, EPA relied on this analysis to address this aspect of the assessment.

One of the considerations evaluated for this proposed exemption was whether a PIP based on a sexually compatible plant created through biotechnology could be transmitted to wild relatives through gene flow of genetic material. A second and more important consideration is whether such an outcrossing event could, in turn, increase weediness of the wild relative. For the following reasons, EPA concluded that the potential is low for weediness to increase in wild relatives through the flow of genetic material coding for a PIP based on a sexually compatible plant created through biotechnology.

There are several factors governing whether gene flow occurs, and thus governing the potential for hybridization between crops and their wild relatives (Ref. 53, 54, 57). First, genetic barriers can prevent hybrids from forming, render them sterile, or reduce the fertility of hybrids, and thus restrict their contribution to subsequent generations. The strength of genetic barriers is correlated to the degree of evolutionary relatedness between the crop and wild relatives, with the barriers being stronger the more distantly related the plants. Second, geographic space is an effective barrier to hybridization. For instance, wild relatives with which corn can hybridize are restricted to Mexico and Central America. There is no potential of hybridization between domesticated corn and its wild relatives in other regions of the globe (Ref. 58). Third,

temporal barriers such as time of flowering also affects hybridization, as hybridization cannot occur when there is no overlap in the time of flowering of cultivated and wild forms (Ref. 54, 57). For some species (e.g., peanut), the flowers do not ordinarily open, and self-pollination may be very near 100 percent; thus, hybridization between cultivated and wild forms is unlikely even if the cultivated and wild forms are synchronized in flowering and close enough geographically for pollen to move between them. Fourth, the ploidy level may differ between a crop and its relatives with many cultivated plants having higher ploidy than their wild relatives. Differences in ploidy levels can significantly reduce the likelihood that the cultivated plant and wild relative will form fertile hybrids (Ref. 54). Finally, some varieties of certain crop species, such as banana, are sterile, and thus are incapable of hybridizing not only with members of other species, but also with members of their own species (Ref. 59). For some crops in the United States, the probability of hybridization and gene transfer with the wild relative is zero, while for other crops, despite the variety of potential barriers to and selection against hybridization, gene transfer is possible. However, even in instances where hybridization is possible, wild relatives generally tend to possess higher levels of resistance to pests and disease than do the cultivated members of those populations (Ref. 23). Wild relatives also tend to express a greater range of levels of inherent plant defense compounds than do cultivated plants, including the production of higher levels of substances that could potentially be used as PIPs (Ref. 23).

If an agricultural or semi-managed plant containing a PIP based on a sexually compatible plant created through biotechnology hybridizes with a wild relative, it is unlikely that the levels of expression of the transferred PIP in the wild relative will be substantially increased. For reasons described in Unit VI.A.3.c., EPA anticipates that for agricultural, semi-managed, and feral plants, levels of substance expressed by the PIP based on a sexually compatible plant created through biotechnology will not exceed levels currently observed for the substance in sexually compatible plants (Ref. 23, 51). Thus, because the levels of expression of a PIP based on a sexually compatible plant created through biotechnology will not exceed levels currently observed in plant populations pursuant to proposed criteria, the potential for an increase in weediness in

wild relatives is low should the wild relative acquire the exempted PIP trait.

e. Low Potential for Occupational and Non-Occupational Risk to Humans

In general, PIPs are likely to present a limited exposure to humans. In most cases, the predominant, if not the only, exposure route will be dietary. Significant respiratory and dermal exposures are unlikely in non-occupational settings because most plant substances, including PIPs based on sexually compatible plants created through biotechnology, are expressed at relatively low levels and are found inside the cell, and therefore any human health risks in non-occupational settings are expected to be negligible. Although a potential for non-dietary exposure (e.g., dermal and inhalation) in occupational settings may exist due to the processing of plants resulting in increased exposure to intracellular substances like PIPs, EPA expects exposure to be low due to the relatively low levels of such substances in plants (Ref. 60). Given that PIPs based on sexually compatible plants created through biotechnology represent a subset of substances present in sexually compatible plants that breeders have experience with and must be expressed at or below existing levels, in the same tissues, and at the same developmental stages, EPA does not expect novel exposures from the substances involved, as the sexually compatible plant sources have a history of being safe sources of genetic diversity for use in cultivated plants. Because these PIPs are indistinguishable from those found in a sexually compatible plant, which in many cases is a close relative or even the same plant species, existing allergen avoidance strategies for certain plants would still be protective.

Regarding dermal exposure, expressed substances of PIPs based on sexually compatible plants created through biotechnology may in some cases be present in sap or other exudates from the plant or the produce and thus may present some limited opportunity for dermal exposure to persons physically contacting the plant or raw agricultural food from the plant. Farmers and food handlers (e.g., individuals harvesting produce by hand, preparing food for sale, or stocking produce bins in grocery stores) or floral workers are those most likely to experience dermal contact with the substances on an occupational basis. However, because most plant substances, including PIPs, are expressed at relatively low levels and are found inside the cell, the level of exposure is still expected to be low.

Most of the substances that could be the subject of this proposed exemption are unlikely to pass through the skin to affect other organ systems or elicit allergenic sensitization (Ref. 60, reviewed in 61). The most common skin reaction to plant products is likely irritant contact dermatitis. These dermal reactions are generally mild, of a self-limiting nature or self-diagnosed, and self-treated (Ref. 60). Skin penetration of the substances comprising a PIP is dependent on several characteristics, including the substances molecular structure and hydrophobicity, accompanying mechanical irritation (e.g., thorns), the duration and site of contact, and the lipid content of the skin. For most PIPs, human skin, which is composed of two layers, the epidermis and the dermis, is a natural barrier. The outer epidermal layer of the skin consists of dead cells in tight junctions (keratin) that provide a shield against elements in the outside world. The rapid shedding and replacement of the keratin layer serves as a further protective feature of the skin, as any damaged cells are quickly shed and replaced. For those PIPs based on sexually compatible plants created through biotechnology that might possess some properties that allow limited penetration of the skin, the potential amount passing through the outer epidermal layer of the skin (epidermis) is likely to be negligible (Ref. 60). Some irritant contact dermatitises are initiated by mechanical means which allow for limited penetration of the skin. For example, the small needle-like hairs of some plants (e.g., stinging nettle) penetrate the skin to deliver small doses of irritant toxins (e.g., histamine). However, plants with these characteristics are rare in cultivation, further limiting exposure (Ref. 60).

Importantly, PIPs based on sexually compatible plants created through biotechnology represent a subset of substances already present in related plants. PIPs based on sexually compatible plants created through biotechnology would therefore not be expected to alter predicted exposures of workers to plant proteins or other plant substances. Thus, dermal exposure to residues of PIPs based on sexually compatible plants created through biotechnology would not be predicted to alter exposure patterns in occupational settings.

Regarding inhalation exposure, PIPs based on sexually compatible plants created through biotechnology may in some cases be present in pollen, and some individuals (e.g., those working on farms in nurseries or other plant-

growing areas) may be exposed through inhalation to wind-blown pollen. When present in pollen, the pesticidal substance is likely to be integrated into the tissue of the pollen grain. The likeliest impact of pollen exposure is rhinitis, or inflammation of the mucous membranes lining the nose, resulting in symptoms like nasal congestion, sneezing, itching, post-nasal drainage, and runny nose. This proposed exemption will not change current exposures or affect strategies for dealing with reactions to PIPs based on sexually compatible plants created through biotechnology that may be aero-allergens or irritants (Ref. 60). Pollen grains are solid, insoluble particles of sufficiently large diameter that they are filtered out in the nasopharynx or in the upper respiratory tract (Ref. 60), from which they are generally swallowed into the gastrointestinal tract. The gastrointestinal surface forms a barrier between the body and the luminal environment and is often described as having two components: "(1) The intrinsic barrier is composed of the epithelial cells lining the alimentary canal and the tight junctions that tie them together, and (2) The extrinsic barrier consists of secretions and other influences that are not physically part of the epithelium, but which affect the epithelial cells and maintain their barrier function." Regarding the intrinsic barriers, the alimentary canal is lined by sheets of epithelial cells that form the defining structure of the mucosa and establish the basic gastrointestinal barrier. Regarding the extrinsic barriers, the gastrointestinal epithelium is coated with mucus, which is synthesized by cells that form part of the epithelium. Mucus contributes to barrier function in several ways by slowing the diffusion of molecules. Additionally, molecules in food, including edible plant tissue, are too large to be absorbed by the gastrointestinal tract and are broken down into smaller molecules to be absorbed and utilized by the body. Plant materials such as pollen are also subjected to the processes in the digestive tract that reduce larger molecules to smaller constituents that can be absorbed by the membranes of the small intestine. Importantly, pollen characteristics (e.g., wind vs. insect dispersal, amount produced) are often maintained within plant families, as is necessary for successful breeding to occur. Therefore, PIPs based on sexually compatible plants created through biotechnology should not alter already established characteristics of any particular species. In cases of

occupational rhinitis, these PIPs would not be expected to significantly alter already established patterns of exposure to occupational dusts.

f. Low Potential for Resistance Selection Pressure Posed by PIPs Based on Sexually Compatible Plants Created Through Biotechnology To Exceed That Found in Sexually Compatible Plants

A component of EPA's oversight historically for PIPs created through biotechnology has been the requirement for registrants to implement an insect resistance management plan. Transgenic *Bacillus thuringiensis* (*Bt*) PIPs are likely at greater risk for insects developing resistance than many conventional pesticides targeting the same insects because *Bt* PIPs are expressed throughout all plant tissues for the entire lifespan of the plant compared to conventional pesticides, which typically have shorter periods of efficacy and are applied when pests are likely to cause yield loss. To address resistance management due to increased exposure, the Agency has required detailed information for *Bt* PIPs (e.g., dose expression levels, cross-resistance potential, modeling scenarios) alongside terms of registration (e.g., resistance monitoring programs, remedial action plans, compliance assurance, and grower education activities).

As mentioned in the previous paragraph, the risk of resistance to *Bt* PIPs primarily stems from increased exposure to the PIP from expression across plant tissues and across the plant lifespan, which are achieved due to transgenic regulatory elements used in the creation of the PIP. However, in the case of PIPs based on sexually compatible plants created through biotechnology, the potential to develop resistance is lower than that of *Bt* PIPs due to the limitation on expression profile (e.g., same tissues and developmental stages) to be within what is found in sexually compatible plants. EPA does not anticipate an increased resistance risk posed by PIPs based on sexually compatible plants created through biotechnology compared to those developed by conventional breeding. The proposed rule does not require specific resistance management plans from developers of PIPs based on sexually compatible plants created through biotechnology that qualify for the new exemption.

g. Are there any considerations associated with newer biotechnology techniques?

Newer biotechnology techniques using present-day genome editing techniques (e.g., CRISPR, zinc-finger

nucleases, transcription activator-like effector nucleases, oligonucleotide-directed mutagenesis) can present some additional considerations beyond those discussed previously, and these were taken into consideration in developing the proposal to exempt PIPs based on sexually compatible plants created through biotechnology from FIFRA requirements in order to meet the requirement at 40 CFR 174.21(a). Present-day genome editing techniques allow for precise modifications to the plant genome such that the PIP in question meets the proposed criteria. These new technologies can aid in plant breeding and result in varieties indistinguishable from those developed through conventional breeding (Ref. 12).

Although genome editing technologies allow for more precise editing or insertion compared to older technologies, there is still a possibility of unintended modifications, also called “off-target” mutations. With genome editing technologies, off-target mutations may occur when the genome editing machinery cuts DNA at sites that share sequence similarity with the actual target sequence. However, off-target mutations may occur as a result of any form of plant breeding, including conventional breeding, and an off-target mutation is not necessarily significant in a specific PIP/plant combination with regard to food, feed and/or environmental risk. In plants, off-target mutations can largely be removed by backcrossing, if necessary, regardless of the method by which they were introduced (Ref. 62). It is very likely that the off-target mutation and the desired trait are inherited separately, which allows for developers to select plants that have the desired trait, but that do not have the off-target mutation.

A recent comparison of single-base pair substitution mutations resulting from plant breeding technologies found that the number of mutations detected after genome editing was not significantly different from what was found after routine tissue culture (Ref. 63). This analysis supports the conclusion that off-target mutations from genome editing are not inherently different or riskier than off-target mutations occurring through other forms of plant breeding. In addition, recent studies in rice and maize found that compared to the inherent variation found in the plant, mutations resulting from genome edited off-target mutations were negligible and far fewer (Ref. 64, 65).

The majority of unintended changes at the genomic level, whether due to off-target mutations from plant breeding technologies or through natural

mutations, do not result in significantly deleterious effects to the plant at the phenotypic level (Ref. 4). This is primarily due to the highly plastic nature of plant genomes (Ref. 66, 67, 68). The small percentage of unintended changes that do result in significant deleterious effects are far more likely to produce an effect deleterious to the plant itself (*e.g.*, stunted growth) than a novel exposure to humans or the environment (Ref. 34). Although EPA only regulates the PIP, FDA regulates the remainder of the plant for food safety (see Unit II.B.). In the context of the genetic material encoding the PIP, off-target mutations in the coding region resulting in protein-level changes would not be eligible for exemption based on the proposed criteria requiring that the substance be the same as identified in a source plant. Off-target mutations in the regulatory region would not be considered a significant risk due to the same rationale allowing for modifications to regulatory regions as described in Unit VI.A.2.a. EPA therefore considers off-target mutations resulting from genome editing technologies to present a negligible risk to the environment in the context of PIPs based on sexually compatible plants created through biotechnology.

h. FIFRA Section 25(b)(2): Preliminary Statutory Finding

EPA preliminarily concludes that PIPs based on sexually compatible plants created through biotechnology as described for proposed 40 CFR 174.26, warrant exemption under FIFRA section 25(b) because these substances are of a character that is unnecessary to be subject to all the requirements of FIFRA to carry out the purposes of the Act. Specifically, EPA has preliminarily concluded that PIPs based on sexually compatible plants created through biotechnology that meet the exemption criteria pose a low probability of risks to humans and the environment.

As discussed in Unit VI.A.3., EPA has preliminarily concluded that PIPs based on sexually compatible plants created through biotechnology that meet the exemption criteria pose a low probability of non-dietary risk to humans and the environment. As explained in this preamble in Unit VI.B., EPA has also determined that there is a reasonable certainty that no harm will result from aggregate exposure to the residues of such products, including all anticipated dietary residues and all other exposures for which there is reliable information. As such, EPA has preliminarily determined that use of PIPs based on sexually compatible plants created

through biotechnology is not likely to cause unreasonable adverse effects on the environment and humans in the absence of regulatory oversight other than the adverse effects reporting requirement in existing 40 CFR 174.71. Based on the low probability of the potential risks coupled with the proposed exemption eligibility determination process, EPA anticipates minimal societal benefits would be gained by imposing the full degree of oversight associated with FIFRA registration (see Unit VI.A.4. for additional information on benefits). Finally, the adverse effects reporting requirement at existing 40 CFR 174.71 provides a mechanism that could alert the Agency to information regarding adverse effects associated with a PIP based on a sexually compatible plant created through biotechnology. Based on the information available, the benefits of exempting PIPs based on sexually compatible plants created through biotechnology from FIFRA outweigh the potential risk associated with these PIPs (risk that is low).

4. Benefits

This unit summarizes the benefits that are described in greater detail in the cost analysis (Ref. 2). This cost analysis quantifies registration or Pesticide Registration Improvement Extension Act of 2018 (PRIA) related fees as required by FIFRA. These fees represent savings to developers if the proposed exemption becomes final.

The direct benefit of the proposed rule is the reduced regulatory burden associated with developing and marketing a PIP based on a sexually compatible plant created through biotechnology. The proposed exemption may encourage more research and development in this area of biotechnology and better enable firms of all sizes to engage in the development of these types of PIPs.

Entities that support major crops or larger markets can more easily absorb fixed registration costs. As a portion of the total costs of researching and developing a new active ingredient, registration costs often represent a small proportion of the overall costs of bringing a product to market. However, an outlay of fixed registration costs can be significant for a firm that supports minor crops. Removal of registration costs for these entities can be significant, so smaller entities may feel the most regulatory relief as a result of this rule.

Crop varieties modified for greater pest and disease resistance could also reduce the use of externally applied pesticides, which in turn could reduce

farm expenditures and provide environmental benefits. Finally, the proposed exemption would also reduce the burden on the Agency to review applications for registration.

Exempting PIPs based on sexually compatible plants created through biotechnology from registration while also promulgating an exemption from the requirement of an FFDCA tolerance for residues of such PIPs in or on food or feed has an estimated incremental cost savings (the primary benefit of the rule) of about \$444,000–\$459,000 per product. This savings represents the difference between the new costs of the process to submit a letter of self-determination and the old estimated costs that developers would have had to incur to meet Agency data requirements and to register the PIP. The annual number of PIPs based on sexually compatible plants created through biotechnology cannot be forecasted, so the Agency based annual and annualized cost savings estimates on an assumption that there would be one PIP that fit the exemption category per year for the next ten years. This estimate is meant to inform the public of the cost savings and their magnitude over time. The estimate avoids Agency conjecture about how many products would be registered in the absence of this exemption over time. The number of future PIPs based on sexually compatible plants created through biotechnology being developed will depend on the market for these products.

a. Growers

Growers will have more tools to combat pest pressure because the proposed exemption might accelerate the development of new plant varieties containing exempt PIPs based on sexually compatible plants created through biotechnology that target those pests. Faster marketing of PIPs based on sexually compatible plants created through biotechnology will allow the market to respond faster to changes in disease pressure and the emergence of resistance to existing pesticides, which can be important to growers. EPA anticipates that the proposed exemption for PIPs based on sexually compatible plants created through biotechnology will particularly encourage the development of PIPs based on sexually compatible plants created through biotechnology in minor crops. The limited acreage on which minor crops are cultivated makes it more difficult to recoup investment in research and development into new varieties, especially if regulatory costs are high.

b. The Agency

Finally, the proposed exemption would also reduce the burden on the Agency to review applications for registration. By proposing to exempt those PIPs based on sexually compatible plants created through biotechnology due to low probability of risk and lack of unreasonable adverse effects in the absence of oversight, EPA will concentrate its regulatory efforts on other PIPs that may pose potential risks. Whereas the introduction of transgenes into a plant could result in the exposure of humans and the environment to a new substance or a previously known substance in a new way, the modifications associated with qualifying PIPs based on sexually compatible plants created through biotechnology are unlikely to result in novel exposures. Thus, concentrating regulatory efforts on PIPs with a higher potential of novel exposures is a more efficient use of EPA's resources.

B. What is the proposal to exempt residues of PIPs based on sexually compatible plants created through biotechnology from the requirement of a tolerance?

Pursuant to its authority under FFDCA section 408(e), 21 U.S.C. 346a(e), EPA is proposing to exempt from the requirement of a tolerance residues of pesticidal substances from PIPs based on sexually compatible plants created through biotechnology that meet the conditions proposed for this exemption. The Agency believes that when the proposed conditions are met, there is a reasonable certainty that no harm will result from aggregate exposure to residues of these pesticidal substances from PIPs based on sexually compatible plants created through biotechnology, including all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency believes the exemption criteria will ensure that the exempt PIPs would not result in exposures that are significantly different from what humans are currently exposed to in the food supply; therefore, the exemption would be safe in light of the history of safe exposures.

This proposed exemption is intended to address the second condition for exemption from FIFRA regulation under 40 CFR 174.21(b): The requirement for a tolerance exemption for the residues of PIPs intended to be produced and used in a plant used as food or feed. The proposed rule also includes a process through which developers of PIPs based on sexually compatible plants created through biotechnology submit either a

self-determination letter or request for EPA confirmation that their PIP meets the criteria for exemption. That process is proposed at 40 CFR 174.90, and details of the process for and contents of an exemption eligibility determination submission are found in Unit VI.C. That unit also describes the circumstances in which submission of a separate determination for purposes of the FFDCA exemption for a PIP proposed for use in food or feed is required.

Given that the proposed exemption could potentially cover thousands of substances, a small fraction of which are known toxicants (for discussion see Unit VI.B.3.), the Agency is proposing to use certain guardrails to account for the rare instances in which residues of a pesticidal substance may reach levels in food or feed that are unsafe. First, EPA proposes a criterion for exemption under FFDCA that limits the presence of residues of the pesticidal substance in the recipient plant. Specifically, residues of a pesticidal substance in plants used for food are allowed to be present only in the same plant tissues and developmental stages where such residues are found in a sexually compatible plant. Additionally, the levels of that pesticidal substance cannot exceed levels found in a sexually compatible plant, with the added limitation that those levels may not be injurious or deleterious to human health. In other words, if levels that are injurious or deleterious to human health are observed, the PIP and its residues would not be covered by the proposed exemption from the requirement of a tolerance. This approach is consistent with the existing exemption criteria for residues of a pesticidal substance from a sexually compatible plant, which also limit the levels of residues of exempt PIPs present in the food from that plant to those that are not injurious or deleterious to human health (40 CFR 174.508(c)). Second, under the proposed exemption for PIPs based on sexually compatible plants created through biotechnology, a developer may wish to request an exemption for residues of a pesticidal substance whose levels are commonly screened for in conventional breeding to ensure the safety of the food. In these instances, the developer of such a PIP would be required, as part of the exemption eligibility determination process proposed at 40 CFR 174.90, to describe how conventional breeding practices have been and will be performed on the recipient food plant to ensure that the levels of the pesticidal substance are not injurious or deleterious to human health. This is to

affirm that PIPs based on sexually compatible plants created through biotechnology will be held to the same safety standards by the plant breeders as PIPs in plants created through conventional breeding. This requirement can be fulfilled by a developer with a confirmation that the product has been screened for acceptable levels of the pesticidal substance (e.g., generally accepted safe content for solanine in potatoes is 20–25 mg/100 g of fresh potato). Breeders have decades of experience developing new plant varieties and are familiar with the toxins that may be produced by certain plants used for food and feed, e.g., by chemically analyzing the components of plants. Because PIPs based on sexually compatible plants created through biotechnology are equivalent to those substances found within plants that are sexually compatible with the recipient plant, these substances are not expected to be novel to breeders and the existing screening methods are similarly expected to remain effective. Third, as described further in Unit VI.C.1., residues of a PIP used in food or feed, which would include residues of a PIP based on a sexually compatible plant created through biotechnology, remain subject to the adverse effects reporting under 40 CFR 174.71 even after the residues have been exempted from the requirements of FFDCA. Therefore, upon learning of any adverse effects, which includes injurious or deleterious levels of the pesticidal substance in food or feed, EPA has the authority to reconsider whether the PIP and the residues of the PIP continue to meet the criteria for exemption. Further, as described in the preamble of the July 19, 2001 **Federal Register** notice implementing 40 CFR 174.71 (66 FR 37772; July 19, 2001), reports involving food or feed (i.e., those subject to enforcement under FFDCA) would be made to EPA, but EPA will share such reports with FDA. EPA and FDA will individually determine whether any action is necessary to protect the public health, and if so, what constitutes appropriate action based on their respective statutes (EPA—FIFRA, FDA—FFDCA). Therefore, 40 CFR 174.71 is a means of ensuring that EPA and FDA can address any potential hazard identified subsequent to self-determination or EPA confirmation that a PIP meets the requirements for exemption.

1. Proposed Criteria and Associated Definitions

Unit VI.A.2. outlines the scope of the FIFRA exemption proposal for PIPs

based on sexually compatible plants created through biotechnology. The criteria and associated definitions discussed in that unit are equally relevant to the proposed FFDCA exemption for residues of these PIPs for food and feed use. For example, the proposed definitions of “native allele,” and “native gene” are discussed in greater detail in Unit VI.A.2. Also discussed in Unit VI.A.2. are the following phrases: “(1) The pesticidal substance is found in plants that are sexually compatible with the recipient plant; and (2) Limitations on expression profile.” The proposed definition of “gene” is discussed in Unit V.A. Thus, the following considerations under the proposed FFDCA exemption refer to the concepts discussed in other parts of the exemption proposal when appropriate.

EPA is proposing criteria and supporting definitions that describe residues from PIPs based on sexually compatible plants created through biotechnology that the Agency expects to meet the FFDCA safety standard for establishing exemptions. This proposed exemption covers the residues of the pesticidal substance of those qualifying PIPs and would eliminate the need to establish a maximum permissible level in or on food and feed for these residues.

EPA’s basis for its proposal is that the criteria of the exemption circumscribe a group of PIPs that will not result in novel exposures, dietary or otherwise. This analysis is based on the large body of knowledge about the history of safe use from foods containing these substances that have been consumed by humans for long periods of time. Because PIPs based on sexually compatible plants created through biotechnology are equivalent to those that could have been created through conventional breeding, plant breeders will retain their ability to ensure that the substances will be at safe levels for humans in the resulting food plant. EPA concludes that the potential is low that qualifying PIPs based on sexually compatible plants created through biotechnology introduce novel exposures (Unit VI.A.3.b.).

a. Large Body of Knowledge

EPA relied on the large body of scientific literature that describes constituents of food from plants in sexually compatible populations (Ref. 37). EPA used scientific literature on the effect on humans of consumption of whole foods from plants generated from epidemiological studies (Ref. 24, 25, 27, 29, 31, 69, 70, 71, 72, 73) and animal model testing of the effects of either whole foods, or constituents from food,

contained in these crops (Ref. 26, 28, 30, 74, 75, 76, 77) to draw conclusions on the potential risks to humans through the dietary (including drinking water) and residential (or non-occupational) route of exposure to these substances. EPA also considered scientific knowledge from a number of disciplines including genetics, plant physiology, phytopathology, toxicology, ecology, biochemistry, evolutionary biology, genomics, and plant breeding. Information from the field of plant physiology was considered regarding plant metabolism to evaluate the production of substances that may have pesticidal effects and conditions that may limit the plant’s production of such substances, see Unit VI.B.1.c. and Unit VI.A.3.c. (Ref. 33). EPA considered information from the fields of biochemistry and toxicology, for example, to identify which substances in food from plants might pose a dietary risk (Ref. 37, 39, 78). The Agency also used experimental data derived from the science of phytopathology that characterize the pest resistance mechanisms in plants to understand the types of traits through which PIPs may confer resistance or tolerance to pests (Ref. 3, 79). The sciences of ecology and evolutionary biology were considered for information on genetic diversity, mutation, and reproductive isolation mechanisms in populations to understand the types of genetic changes that are likely to occur when plants interbreed in nature (Ref. 34). Plant breeding and genetics provided considerations to help describe the mechanisms of incompatibility and interbreeding, which aided EPA in determining when plants are likely to interbreed in nature. As discussed in greater detail in Unit VI.A.3.g., information from genomics and molecular biology were considered to understand the ability of newer biotechnology techniques, such as those using genome editing techniques, to create traits equivalent to those found in conventionally bred plants (Ref. 35, 36).

Recommendations from several FIFRA SAP reports were considered in the development of the proposed exemption criteria for PIPs based on sexually compatible plants created through biotechnology, and to circumscribe the types of genetic modifications in the recipient plant that are unlikely to result in novel exposure to humans, dietary or otherwise (Unit II.C.3., Table 1).

b. Low Potential for Novel Exposure

All plants, including those commonly consumed as food, naturally contain pesticidal substances that confer pest

resistance. Humans have for approximately 10,000 years selected and bred certain plants for food, feed, and fiber, that have these pesticidal characteristics. Humans are therefore familiar with and have been exposed to many plant-produced pesticidal substances and their residues, such as those that could be developed for use as PIPs based on sexually compatible plants created through biotechnology, in their diet and otherwise for millennia. Given that PIPs based on sexually compatible plants created through biotechnology are intended to represent a subset of substances present in plants that breeders are familiar with and that in many instances have been safely consumed by humans, EPA does not expect that these substances, or residues of these substances, would result in novel dietary exposures.

Several considerations for assessing the potential for novel risks for PIPs based on sexually compatible plants created through biotechnology are discussed in Unit II.C.3. in the context of the proposed FIFRA exemption. The concepts presented in that unit are equally relevant to the FFDCSA safety assessment of residues of PIPs based on sexually compatible plants created through biotechnology that are used for food or feed.

Pesticidal traits have evolved in plant populations over time through the processes of mutation, selection, and genetic exchange with sexually compatible species (Ref. 47, 48). The ability to produce viable offspring is only possible in nature for organisms that are genetically similar and possess many traits in common. Traits, and the genetic material encoding them, can be passed through a sexually compatible plant population by breeding. The mixing of genetic material that occurs through breeding results in the members of a sexually compatible population having similar traits and similar genetic material. Due to the mixing of traits by mating, similar exposure scenarios are expected for food plants that are sexually compatible—in other words, substances in sexually compatible plants are expected to be similar and therefore, only substances that plant breeders are already familiar with are expected to be present in sexually compatible plants. This conclusion is consistent with the 1992, 1993, and 1994 FIFRA SAP reports that indicated that sexually compatible plants are more likely to have a common constitution than unrelated plants and thus movement of genetic material between sexually compatible plants is less likely to lead to novel exposures (Unit II.C.3., Table 1).

For agricultural plants, those defined as sexually compatible would also include existing plant cultivars, landraces, and breeding lines, as well as plant relatives that interbreed with crops but that are not currently used as agricultural plants. Plant breeders have for many years followed established practices to ensure safety when moving genes into agricultural varieties from nonagricultural relatives, particularly from inedible relatives, with no indication that substances resulting from these genes present higher levels of risk than those from genes moved only amongst agricultural varieties as long as those established practices are followed (Ref. 13, 14, 15, 16). Therefore, the likelihood that the inclusion of nonagricultural varieties as potential source plants would lead to unsafe dietary exposures from residues of PIPs based on sexually compatible plants created through biotechnology is low.

Genetic diversity is created over time and EPA proposes to capture some of the ongoing diversification not identified in existing native genes or native alleles through the inclusion of novel changes resulting in the differential expression of existing genes, so long as no novel substance is produced and the substance is not produced in different tissues or at different developmental stages than those found in a sexually compatible plant. Modifications that lead to differential expression of a substance are not expected to result in levels that exceed the boundaries of the natural variation found in sexually compatible plants due to physiological constraints that are related to energy expenditure (further discussed in Unit VI.B.1.c. and Unit VI.A.1.c.). The potential for novel dietary exposures to occur with the differential expression of existing genes, or the movement of native genes and native alleles among sexually compatible plants, is therefore low, because no substance novel to plants that are sexually compatible with the recipient plant will be produced, nor will the substance be found in tissues or developmental stages at levels, in which it is not currently found.

c. Low Potential for Levels of PIPs Based on Sexually Compatible Plants Created Through Biotechnology To Exceed Those Found in Sexually Compatible Plants

EPA has evaluated whether there are likely to be quantitative changes in expression levels of PIPs based on sexually compatible plants created through biotechnology that may pose dietary risks. As discussed later in this unit, EPA has determined that the

probability is low because the highest levels of pesticidal substances likely to be expressed by qualifying PIPs based on sexually compatible plants created through biotechnology is not likely to be significantly different from those that humans are currently exposed to in the food supply. To codify this principle into EPA's regulatory text, EPA is proposing an exemption criterion in which the level of expression of PIPs based on sexually compatible plants created through biotechnology is bound by the upper limit of expression of the pesticidal substance observed in sexually compatible plants. By limiting the level of expression that qualifies for an exemption in this way, EPA can ensure that the exposures fall within the normal historical range of exposures with which plant breeders have experience limiting to ensure safe exposures when introduced into food plants.

An analysis discussing the likely range of expression of PIPs in sexually compatible plants was presented in an EPA issue paper, entitled: "FIFRA: Benefit and Environmental Risk Considerations for Inherent Plant-Pesticides." A summary of that analysis is presented in Unit VI.A.3.c. The factors that influence the determination of low probability of risk under FIFRA that are discussed in that unit are equally relevant to the FFDCSA safety assessment of residues of those same PIPs in food or feed. Relevant considerations summarized in that unit include: (1) The level of production of substances normally varies among sexually compatible plants because of differences in potential to express a substance and environmental conditions; (2) Physiological and practical considerations limit the expression levels of PIPs based on sexually compatible plants created through biotechnology; (3) Humans have been and are currently exposed to the range of levels of substances that might be used as PIPs based on sexually compatible plants created through biotechnology.

Moreover, in varietal development, plant breeders assess the new cultivar for food safety, based in part on knowledge of and familiarity with the characteristics of agricultural plants in the relevant sexually compatible populations (Ref. 6, 37). Because PIPs based on sexually compatible plants created through biotechnology represent a subset of substances already present in related plants, the procedures routinely used in agriculture and food processing would continue to be efficacious in identifying these substances, and levels

of these substances, in new food plant varieties.

Although hundreds of new plant varieties enter the market each year within the past 70 years, conventional plant breeding has recorded very few instances of plant varieties causing food safety problems (Ref. 37, 80). EPA believes this same demonstrated record of safety can be applied to the pesticidal substances produced by these plants. Therefore, the Agency considers it highly unlikely that residues of a PIP based on a sexually compatible plant created through biotechnology would occur in or on food or feed at levels that are hazardous. To account for the rare instances in which a substance may reach levels that are unsafe, EPA is proposing as a criterion for exemption that residues of the pesticidal substance are only present in tissues and developmental stages identified in a plant that is sexually compatible with the recipient food plant, and do not exceed levels found within that plant, as long as those levels are not injurious or deleterious to human health. If levels that are injurious or deleterious to human health are observed, the PIP and its residues would not be covered by the proposed exemption from the requirement of a tolerance. In failing to meet the FFDC requirements for exemption, the PIP would similarly fail to meet the exemption requirements under FIFRA.

In conclusion, EPA considered the potential variability of expression levels of PIPs based on sexually compatible plants created through biotechnology and whether such variations would be hazardous if they were to be present in the food or feed supply. EPA concluded that although variations in the production of plant substances will occur in response to environmental conditions, there are physiological and practical considerations that limit the expression level, and thus the abundance of a particular substance in plants that are sexually compatible. By limiting the expression of PIPs based on sexually compatible plants created through biotechnology to not exceed levels that are found in sexually compatible plants, EPA believes that breeders will be able to ensure that exposures fall within the normal historical range of exposures that have proved to be safe through conventional breeding.

2. Dietary Risk Evaluation

For chemical pesticides, EPA's dietary risk evaluation relies on data generated by testing in laboratories using representative animal models to estimate acute, subchronic, or chronic

hazard endpoints, *e.g.*, acute toxicity, carcinogenicity, and developmental toxicity. Conclusions from animal models are used to assess dose-response and describe such endpoints for potential human hazards. Other information, including residue data and information generated by use of mathematical models, are used to develop human exposure estimates. These exposure and hazard components are combined to quantify the potential risk associated with the pesticide's use and to determine the appropriate maximum residue levels of the chemical in or on food or feed, *i.e.*, to set the numerical tolerance. Uncertainty factors are often used in the risk assessment to account for extrapolation from animal models to human toxicity. If the substance is found to be safe, the Agency may issue a tolerance or, as proposed here for qualifying PIPs based on sexually compatible plants created through biotechnology, an exemption from the requirement of a tolerance for the pesticide chemical residues. EPA described the information base typically used to assess the potential risks and safety of PIPs at a public symposium held in September 2016. The materials developed for this symposium are available on <http://www.regulations.gov> in Docket ID No. EPA-HQ-OPP-2016-0427 and on EPA's website at <https://www.epa.gov/pesticides/public-symposium-regulation-plant-incorporated-protectants-rebroadcast-live-webcast>.

In some cases, the use of animal model testing may not be required to support a safety finding for a pesticide chemical residue. For example, for PIPs that are already part of the food supply but moved through the use of biotechnology between two distantly related food plant species (*i.e.*, those that are not sexually compatible and could not have been moved through conventional breeding), EPA has used various forms of information aside from animal testing to assess the safety of PIP residues. These included the open scientific literature to understand the characteristics of the PIP itself as well as the biology of the source plant from which the PIP is derived and the recipient plant in which the PIP will be produced and used. Similarly, in performing the assessment for the proposed tolerance exemption for PIPs based on sexually compatible plants created through biotechnology, the Agency is assessing the substances present in these plants in the context of the history of human consumption of the whole food, and animal model testing of the effects of either whole

foods, or constituents from food, contained in these crops (Unit VI.B.1.a.). EPA's conclusion that qualifying PIPs based on sexually compatible plants created through biotechnology would be safe for human consumption is based on this information. EPA considered that appropriate processing procedures are widely known and are routinely used by consumers and companies involved in food production and processing in the preparation of food containing residues that are the subject of this proposed exemption, including those foods that require specific processing and/or preparation steps in order to be safely consumed (B.3.). Importantly, the efficacy of the food preparation techniques, as well as dietary avoidance strategies, are expected to apply equally to food containing residues of PIPs based on sexually compatible plants created through biotechnology, since residues of those pesticidal substances are a subset of substances already present in related food plants. Similarly, the plant breeding practices that are routinely employed in selecting and developing new plant varieties, such as chemical analysis and visual analysis, are not expected to be affected by this proposed exemption. As a result, the residues are not expected to pose any risk that differs from what people already are exposed to in the food supply.

EPA considered health risks to the general population, including infants and children. Residues of pesticidal substances in or on food or feed from PIPs based on sexually compatible plants created through biotechnology that meet the proposed criteria for exemption would not be new to the food supply, as they are a subset of substances already present in related plants. Accordingly, this proposal should not change anything about the way that children, and to some extent infants, are exposed to substances already found in food that are identical to residues of PIPs based on sexually compatible plants created through biotechnology. EPA's risk assessment also included subgroups as part of the general population, *i.e.*, reflecting differences in diet due to the influence of culture, and allowed for consumption pattern differences of such subgroups.

a. Dietary Consumption Patterns

EPA considered the available information on the varying dietary consumption patterns of consumers and major identifiable consumer subgroups as it pertains to residues of pesticidal substances from PIPs based on sexually compatible plants created through biotechnology. The consumption of food

from plants is part of a balanced and varied diet (Ref. 81). For purposes of this proposed exemption, EPA considered a normal diet to be balanced and varied and to include food from a variety of sources. It does not include plants or plant parts consumed in times of deprivation, for religious reasons, in substance abuse, or by accident. Humans have been consuming food containing pesticidal substances produced by sexually compatible plants for long periods of time. It is not anticipated that this proposed exemption from the requirement of a tolerance, should it be finalized, will affect current consumption patterns of food from crop plants by consumers or major identifiable consumer subgroups, and thus no differences in exposure patterns are anticipated.

b. Validity, Completeness, and Reliability of Available Data

EPA considered the validity, completeness, and reliability of the available information on human consumption of food containing substances that would be identical to the expected residues of pesticidal substances from PIPs based on sexually compatible plants created through biotechnology, including the extensive history of humans safely consuming foods from plants containing these substances, epidemiological studies of human dietary assessments and animal model testing, as well as information from the disciplines of genetics, molecular biology, plant physiology, phytopathology, toxicology, ecology, biochemistry, evolutionary biology, genomics, and plant breeding (Unit VI.B.1.a.). EPA concluded that this information was valid, complete, and reliable, and adequately addressed the issues of hazard and exposure with regard to residues of pesticidal substances from PIPs based on sexually compatible plants created through biotechnology in or on food or feed.

3. Toxicological Profile

EPA considered whether toxic effects could be associated with any pesticidal substances that developers might wish to use as PIPs based on sexually compatible plants created through biotechnology and that might be residues in or on food or feed (Ref. 6). The examination led EPA to conclude that, since the vast majority of substances in plants that are used for food are not toxic, any of these nontoxic substances, should they be used as PIPs based on sexually compatible plants created through biotechnology, would not present any toxic effects.

Plants produce hundreds of thousands of substances of which only about 200 have been identified as potential toxins in food plants, and only 10% of those substances (about 0.01% of all substances) may pose a dietary risk when consumed as part of a normal diet (Ref. 37, 82, 83). One example is the glycoalkaloid solanine, which is commonly biosynthesized in potatoes and to some extent eggplant and peppers (Ref. 6). Solanine poisoning is very rare. However, in large doses it can cause effects such as gastrointestinal tract irritation and drowsiness. Solanine imparts a bitter taste to the tuber, and at high concentrations can even leave a persistent irritation and burning sensation on the tongue, both of which may to some extent deter consumption. Potatoes are bred and monitored in the United States to ensure that they produce only low levels of solanine.

There are several factors that could have contributed to the relatively low number of toxins in food plants. In crop development, low toxicant abundance has been a desired trait to increase usability of a particular plant as a source of nutrition and to enhance its palatability (Ref. 4, 37). Further, the risk of toxins that may be present in a particular food crop appears to be well known, and methods of processing exist to reduce the potential for toxic effects (Ref. 37). For example, as part of the development and characterization of new plant varieties, plant breeders use methods such as gas and/or liquid chromatography coupled with mass spectrometry to identify and quantify toxins in food plants and use this information to identify and remove new varieties from the development pipeline that contain potentially harmful levels of these substances. Over the past 50 years, the sensitivity of some metabolic profiling techniques has increased over 100,000-fold, enabling the detection of exceedingly small amounts of these substances (Ref. 37). As a result, the majority of toxicants in food plants are already known and plant varieties can be screened for their presence and removed from the market if necessary. In this context it is relevant to note that no newly released plant variety exhibited any previously unknown food or feed hazard (Ref. 37, 80).

Because PIPs based on sexually compatible plants created through biotechnology are a subset of those PIPs found in related plants, these substances are not novel to plant breeders. Therefore, the efficacy of the existing monitoring, processing, and preparation methodologies that have been and are being used to produce food safe for consumption is expected to be equally

effective at screening foods that would contain PIPs based on sexually compatible plants created through biotechnology. For the reasons described in Unit VI.B.1.b., EPA expects that PIPs based on sexually compatible plants created through biotechnology do not pose novel exposures (dietary or otherwise) compared to pesticidal substances present in sexually compatible plants. Furthermore, EPA expects that the levels of PIPs based on sexually compatible plants created through biotechnology have a low potential to exceed levels found in sexually compatible plants (Unit VI.B.1.c.) and codifies these levels in the proposed exemption criteria.

4. Cumulative Effects From Substances With a Common Mechanism of Toxicity

FFDCA section 408(b)(2)(D)(v) 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.” This factor is also relevant when considering whether to establish an exemption from the requirement of a tolerance (21 U.S.C. 346a(c)(2)(B)).

As discussed in Unit VI.B.3., EPA recognizes that there are toxicants of plant origin that may be part of the human diet, which could theoretically be used as PIPs based on sexually compatible plants created through biotechnology and which may cause adverse effects. EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity and that may be developed as PIPs based on sexually compatible plants created through biotechnology. EPA also considered whether the cumulative expression (*i.e.*, expression of the PIP across all plants) would result in an adverse effect. Because the PIP based on a sexually compatible plant created through biotechnology could have otherwise been created through conventional breeding, and by extension would not be novel to plant breeders, EPA does not consider that the cumulative expression of a PIP based on a sexually compatible plant created through biotechnology would pose a higher risk than what is currently possible through conventional breeding.

For the reasons discussed in Units VI.B.1.a. through c., any potential cumulative effects from PIPs based on sexually compatible plants created through biotechnology are not expected

to be quantitatively different from those present in the current food supply and the presence of these substances and their residues has historically been safe.

5. Aggregate Exposures of Consumers Including Non-Occupational Exposures

EPA considered the available information on the aggregate exposure of consumers to the residues of PIPs based on sexually compatible plants created through biotechnology. EPA examines exposure through the dietary route (including drinking water), and exposure in the residential non-occupational setting in greater detail in the following units (Unit VI.B.5.a. through e.).

a. Dietary Exposures From Food

Dietary exposure is the most likely route of exposure to PIPs based on sexually compatible plants created through biotechnology as these pesticidal substances are contained within plants consumed as food. As described in this preamble at Unit VI.B.1.a., a large knowledge base and experience exists for the residues that are subject of this proposed exemption, including information on human dietary exposure. Information from all of these sources can be used in evaluating the safety of residues of PIPs based on sexually compatible plants created through biotechnology, as food from a plant engineered to contain such a PIP is comparable to the situation presented by the natural whole food from that plant prior to introducing the genetic modification: No substances new to the sexually compatible plant population would be introduced, and the introduced substances would be consumed as part of the whole food.

The exemption criteria prohibit the introduction of substances that are novel to the sexually compatible plant population and, as discussed earlier, nothing about the PIP would alter the existing mechanisms for breeding, processing or preparing the food. Thus, the Agency expects any exempt PIPs would be consumed as part of the whole food in the same manner as existing foods currently in the food supply and that plants containing residues of these PIPs would be subject to the same procedures plant breeders rely on to ensure the safety of food. There is no evidence in the many studies performed on the relationship of diet to health that food containing substances from sexually compatible plants, when properly processed and prepared, has resulted in adverse health effects (Unit VI.B.1.a. through c.). The Agency believes this assumption is supported by the record of safety of the food

products from plants in sexually compatible populations. Although hundreds of new varieties come on the market each year (Ref. 84), breeding of plants in sexually compatible populations has recorded very few instances of exposures to substances that are not safe in food. Further, no previously unknown food hazard has been observed in new plant varieties developed through plant breeding (Ref. 37, 80).

The primary exposure consideration associated with the pesticidal chemical residues that are the subject of this proposed exemption is whether substances that might be harmful at higher concentrations (or in different tissues or stages) are likely to be present in food from sexually compatible plants at such concentrations. EPA considered the probability of variations in levels of PIPs based on sexually compatible plants created through biotechnology, and whether such variations would be hazardous if these PIPs were to be present in the food supply (Unit VI.B.1.c.). EPA concluded that, based on biological and agronomic considerations, any variations in the levels of PIPs based on sexually compatible plants created through biotechnology is not expected to exceed the levels of these substances currently present in the food supply, which has been determined to be safe. This principle is also codified in EPA's proposed regulatory text in which the level of expression of a PIP based on a sexually compatible plant created through biotechnology is bound by the upper limit of expression of the pesticidal substance observed in sexually compatible plants and that it can only be present at levels that are not injurious or deleterious to human health.

A second exposure consideration is whether this proposed exemption will affect the ability of individuals with food sensitivities to manage these sensitivities. Individuals with food sensitivities, including food allergies, generally avoid foods from plants that they are sensitive to. This proposed exemption, if finalized, would not affect the efficacy of this strategy of avoidance because the proposed exemption will not affect the ability of individuals to recognize and avoid foods they are sensitive to. For example, the ability of persons who have the Mediterranean form of the inherited Glucose-6-phosphate dehydrogenase (G6PD) deficiency to manage their disease by not consuming fava beans or foods made with fava beans will not be affected. The substances in fava beans that can cause hemolytic anemias in such persons

would be exempt only if they are used in fava bean plants and plant varieties that interbreed with fava beans; a population of plants in which such substances normally occur (Ref. 85).

In conclusion, qualifying PIPs based on sexually compatible plants created through biotechnology represent a subset of substances already present in related plants. Therefore, should residues of these substances be present in or on food derived from plants, EPA does not expect them to have any meaningful impact on the already existing dietary exposure profile for these residues and thus risk from dietary exposure to such residues in or on food would be low. Moreover, as an additional measure of safety for residues of qualifying PIPs, the pesticidal substance can only be present at levels that are not injurious or deleterious to human health.

b. Residential, Non-Occupational Exposure

Residues of qualifying PIPs based on sexually compatible plants created through biotechnology may be present in plants grown residentially for consumption. Consequently, EPA examined the potential for non-occupational exposures to these substances in the sections for dermal and inhalation exposure in sections of Unit V.B.5.d. and e.

c. Dietary Exposure From Drinking Water

Dietary exposure through drinking water is considered unlikely. The substances in plants or parts of plants, including residues of PIPs based on sexually compatible plants created through biotechnology, are produced and used inside the living plant itself. As such, the residues are part of the tissue of the plant. When the plant dies or a part is removed from the living plant, microorganisms colonizing the tissue immediately begin to degrade it, using the components of the tissue, including any residues that are the subject of this proposed exemption, as building blocks for making their own cellular components or for fueling their own metabolisms. The residues that EPA is proposing to exempt in this action are subject to the same processes of biodegradation and decay that all biotic materials undergo. This turnover of biotic materials in nature through a process of biodegradation is expected to occur in rapid fashion and is likely to preclude these residues from persisting in the environment long enough to reach the drinking water supply (Ref. 40). There is no indication that plant biotic materials, including the residues

that are the subject of this proposed exemption, are resistant to biodegradation. Even if residues were to reach surface waters, through pollen dispersal or parts of the plants (leaves, fruits etc.) falling directly into bodies of water, they are still subject to microbial degradation and are unlikely to present anything other than a negligible exposure in drinking water drawn either from surface water or ground water sources. Importantly, PIPs based on sexually compatible plants created through biotechnology represent a subset of substances already present in related plants. Therefore, should these residues be present in drinking water, they are not expected to meaningfully alter the already existing pattern of exposure to these residues and thus EPA expects risk to be negligible.

d. Dermal Exposure

Although a potential for dermal exposure may exist, EPA expects such exposure to be negligible because PIPs based on sexually compatible plants created through biotechnology are present in the plant tissue (Ref. 60). In some cases, residues of PIPs based on sexually compatible plants created through biotechnology may be present in sap or other exudates from the plant and thus may present some limited opportunity for dermal exposure to persons coming physically into contact with the plant or raw agricultural food from the plant, *e.g.*, during food preparation (see also Unit VI.A.3.e.). Although contact dermatitis can occur from such exposure (Ref. 60, 86), these reactions are generally mild, of a self-limiting nature, or self-diagnosed and treated. For those substances that possess to some degree properties that might allow some penetration of the skin, the potential amount passing through the outer epidermal layer of the skin (epidermis) is likely to be low (Ref. 60).

Furthermore, most of the substances that could be the subject of this proposed exemption are unlikely to pass through the skin to affect other organ systems or elicit allergic sensitization (Ref. 60, 61, 86, 87). Importantly, those substances that do possess properties that allow some penetration of the skin represent a subset of substances already present in related plants and would therefore not be expected to alter the already existing exposures to plant proteins or other plant substances through handling of the plant containing these substances. Therefore, EPA does not expect novel hazards or exposures from residues of the substances involved and thus these PIPs are expected to represent a low potential

of quantitatively different dermal exposures; therefore, risks from dermal exposures are expected to be low.

e. Inhalation Exposure

Although a potential for inhalation exposure may exist, EPA expects such exposure also to be negligible because PIPs based on sexually compatible plants created through biotechnology are contained within plant cells, which essentially eliminates this exposure route, or reduces this exposure route to negligible levels (Ref. 60). However, residues of PIPs based on sexually compatible plants created through biotechnology may in some cases be present in pollen and other agricultural dust and some individuals, *e.g.*, those living or working in close enough proximity to farms, nurseries or other plant-growing areas, may be exposed to wind-blown pollen, or through visiting such areas may be exposed, through inhalation, to the pollen. The most likely impact of pollen exposure is rhinitis, or inflammation of the mucous membranes lining the nose, resulting in symptoms like nasal congestion, sneezing, itching, post-nasal drainage, and runny nose.

On a per person basis, the potential amounts of pollen involved in these exposures are likely to be low and residues of the pesticidal substance will not in every case be present in the pollen. Importantly, pollen characteristics (*e.g.*, wind versus insect dispersal, amount produced) are often maintained within plant families and, therefore, residues of PIPs based on sexually compatible plants created through biotechnology, which are found among sexually compatible plants, should not alter already established characteristics of any particular plant species. This proposed exemption will not change current exposures, nor affect strategies for dealing with reactions to PIPs based on sexually compatible plants created through biotechnology that may be aero-allergens or irritants (Ref. 60). Thus, EPA concludes that risk from inhalation exposure to residues of PIPs based on sexually compatible plants created through biotechnology is low.

6. Other Considerations

Other considerations for EPA's safety finding under the FFDCA include the sensitivities of population subgroups, endocrine effects, and special consideration for risks to infants and children.

a. Sensitivities of Subgroups

EPA considered available information on the sensitivities of subgroups as it

pertains to residues of qualifying PIPs based on sexually compatible plants created through biotechnology. In performing its assessment, the Agency considered that the diet includes all of the food items that are customarily eaten by human populations or population subgroups. As discussed in this preamble, this proposed exemption will not affect the current pattern of exposure to residues that are the subject of this proposed exemption because the substances at issue are equivalent to substances present in sexually compatible plants and are limited in their level of expression to those observed in sexually compatible plants. Relatedly, the expression pattern of these substances (timing and location of the expression) are limited to those found in sexually compatible plants through the proposed criteria. Individuals recognize and are familiar with the plant-derived food they consume, (*e.g.*, based on prior experience of consumption) and would avoid consuming foods containing substances they know they are sensitive to (Ref. 37, 88, 89). Because the exposure pattern to these foods will not be affected by this proposed exemption, the efficacy of the current strategy whereby sensitive individuals or subgroups of sensitive individuals recognize and avoid certain foods would not similarly not be affected (Ref. 88, 89). Thus, the Agency does not expect any subgroup to be adversely affected by the proposed exemption.

b. Estrogenic or Other Endocrine Effects

Certain food plants, *e.g.*, soybeans, contain estrogen mimics, termed phytoestrogens. Such phytoestrogens are currently being consumed by humans in food derived from plants and are part of the extensive history of safe human consumption of food from plants. Although the Agency considers use of these phytoestrogens as PIPs to be unlikely, EPA cannot rule out the possibility that such phytoestrogens could be developed as PIPs based on sexually compatible plants created through biotechnology. Based on available information concerning levels of phytoestrogens that must be consumed before effects can be seen (Ref. 90), the natural limitations of gene expression (Unit VI.A.3.c.), and the limitations the Agency is proposing on the levels and expression pattern of these substances at 40 CFR 174.541(b), EPA expects that this exemption, as proposed, will not result in levels of phytoestrogens in foods that would be quantitatively different from those currently being safely consumed.

c. Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the risk of pesticide residues based on available information about infants' and childrens' consumption patterns, special susceptibility to pesticide chemical residues, and the cumulative effects. EPA's evaluation of these factors is presented in the following units (Unit VI.B.6.c.i. through iii.).

In addition, this section of the FFDCA requires that, in the context of threshold effects, EPA apply an additional tenfold margin of safety to take into account potential pre- and postnatal toxicity and completeness of the toxicity and exposure databases with respect to infants and children. This safety factor is most relevant when the Agency conducts a quantitative risk assessment upon identifying threshold effects of concern and employs various uncertainty factors, including this safety factor, to ensure an appropriate margin of safety in its risk analysis. For residues of PIPs based on sexually compatible plants created through biotechnology, EPA has concluded that consumption of food containing residues of PIPs based on sexually compatible plants created through biotechnology is safe for infants and children, and that a margin of safety need not be proposed for these residues in food. EPA based its assessment of exposure and toxicity upon the information base described in this preamble in Unit VI.B.1.

i. Dietary Consumption Patterns

EPA considered available information on the dietary consumption pattern of infants and children as it pertains to residues of PIPs based on sexually compatible plants created through biotechnology. The range of foods consumed by infants and children is in general more limited than the range of foods consumed by adults. Most newborns rely on milk products for nutrition, although some infants are fed with soy-based products. Soy-based products may contain residues that are the subject of this proposed exemption. Infants begin as early as 4 months of age to consume specific types of solid foods, including foods from plants that may contain residues that are the subject of this proposed exemption. Later on, apart from processing to facilitate swallowing, the diets of toddlers begin to be based on foods consumed by the general adult population albeit in different proportions. As infants and children mature, more and more of the foods consumed by adults become part of their diets and the relative proportions of the different types of food consumed

change to more closely resemble an adult diet.

Foods that may contain residues that are the subject of this proposed exemption are part of a normal diet. They have been consumed by infants and children over long periods of time. The likelihood that exposure as part of a normal diet to these substances could lead to harm to infants and children is low. As the diets of humans change from infancy through childhood and into adulthood, there is some possibility that the amount of foods that contain residues that are the subject of this proposed exemption being consumed may change, with those consuming the greatest amounts of plant-based foods being the most exposed to substances that may be subject of this proposed exemption. There is no evidence, however, that such changes are likely to result in disproportionately high consumption of these residues in comparison to the general population. Thus, there is no evidence that any exposures would be different from those currently in existence. The evidence suggests that consumption of foods containing residues from PIPs based on sexually compatible plants created through biotechnology, including changes in exposure (*i.e.*, relative proportions of the different types of food consumed from infancy through childhood and into adulthood) is highly unlikely to lead to any harm (Units VI.B.1. through 5.).

ii. Special Susceptibility

EPA considered available information on the potential for special susceptibility of infants and children, including prenatal and postnatal toxicity, to residues of qualifying PIPs based on sexually compatible plants created through biotechnology. The substances that are the subject of this proposed exemption occur in the normal diet, and there is no evidence that exposure to such residues, as components of food, present a different level of dietary risk for infants and children.

iii. Cumulative Effects of Residues With Other Substances With a Common Mechanism of Toxicity

EPA examined the available information on the cumulative effect of residues of PIPs based on sexually compatible plants created through biotechnology, as well as other substances in food that may have a common mechanism of toxicity with these residues, and considered effects on infants and children (Unit VI.B.4.). Food from sexually compatible crop plants is being safely consumed by

humans, including infants and children, either directly or indirectly in products such as meat and milk that are derived from animals that consume forage and other crops, *e.g.*, corn and other grains. Considering the history of safe consumption and the information base described in Unit VI.B.4., EPA has not found that substances in food from plants share common mechanisms of toxicity with other substances.

d. Safety Conclusion

Based on the information discussed in this preamble and in the associated record, EPA preliminarily concludes that when the proposed conditions are met, there is reasonable certainty that no harm will result from aggregate exposure to residues of PIPs based on sexually compatible plants created through biotechnology, including all anticipated dietary exposures to humans for which there is reliable information. This preliminary finding is based on the Agency's determination that the proposed exemption criteria would only exempt PIPs that share relevant characteristics with PIPs already found in sexually compatible plants, thereby ensuring that residues of these PIPs do not pose different risks to humans. Specifically, the proposed exemption only applies to substances already found in plants that are sexually compatible with the recipient food plant, that are present in tissues and developmental stages identified in those plants, and whose expression does not exceed levels that are found within those plants. Moreover, as an additional measure of safety, the exemption specifically excludes those residues of PIPs from the exemption that are present in the recipient food plant at levels that are injurious or deleterious to human health. The safety determination for PIPs based on sexually compatible plants created through biotechnology is based on a large body of knowledge about the history of safe use from foods containing residues of PIPs that are present in plants and EPA's assessment of scientific literature that describes constituents of food from plants in sexually compatible populations. To develop the proposed exemption criteria for PIPs based on sexually compatible plants created through biotechnology, and to circumscribe the types of genetic modifications in the recipient plant that are unlikely to result in novel exposure to humans, dietary or otherwise, EPA relied on recommendations from several FIFRA SAP reports and considered information from the public literature to understand the ability of newer biotechnology techniques to create traits

equivalent to those found in sexually compatible plants.

e. Analytical Enforcement Methodology

Before issuing an exemption from the requirement of a tolerance, the FFDCA requires an analytical method for detecting and measuring the levels of the pesticide chemical residue at issue in food, unless the Administrator determines that there is no need for such a method and explains the reasons for that determination in the rulemaking establishing the exemption (21 U.S.C. 346a(c)(3)). In the case of a reversal of an exemption decision, established analytical methods could be critical to enable detection of the affected crop, *e.g.*, should a recall of foods be necessary. To meet the proposed exemption criteria at 40 CFR 174.21(d), a developer is likely to already be in possession of the analytical methods that can be used for the detection of either the genetic material or the gene product associated with the PIP. For example, to provide the nucleic acid sequence information of the PIP as part of the exemption eligibility process, developers may use several oligonucleotide primers for gene sequencing. These primers can similarly be used for the specific detection of the PIP in the food plant using standard PCR methods. Conversely, in those instances in which primers are not already available, the information provided on the nucleic acid sequence of the PIP is expected to be sufficient to promptly design oligonucleotide primers *de novo*. Therefore, EPA does not find it necessary to require submission of analytical methods for the detection in plants of PIPs based on sexually compatible plants created through biotechnology.

C. What are the proposed exemption eligibility determination procedures and requirements of 40 CFR part 174, subpart E?

EPA proposes to use currently reserved Subpart E of 40 CFR part 174 for a proposed exemption eligibility determination process related to the proposed exemptions. Within that subpart, EPA proposes adding four sections: One to describe the process for determining eligibility for an exemption, one to describe the general submission process for a self-determination letter, one to describe the general submission process for EPA confirmation, and one to describe the information requirements specific to PIPs based on sexually compatible plants created through biotechnology. These additions are necessary because EPA is proposing to make the

exemption of PIPs based on sexually compatible plants created through biotechnology contingent upon notifying EPA prior to a PIP being brought to market through a self-determination letter and/or by seeking EPA confirmation that a PIP meets the exemption criteria (options described in Unit VI.C.1.).

The proposed exemption eligibility determination process will allow the Agency to maintain a record of the PIPs that meet the criteria for exemption. This record will aid in inspections conducted by the Agency to ensure compliance and to confirm that PIPs in the food supply do indeed meet the standard of safety as defined by the exemption criteria. Also, if it were determined based on new information that a PIP was not eligible for exemption, such a record would help inform EPA and the FDA of the most appropriate steps to protect public health (including enforcement). As described in Unit VI.A.4., with the proposed exemption eligibility determination process, exempting PIPs based on sexually compatible plants created through biotechnology has an estimated incremental cost saving of about \$444,000–\$459,000 per product, compared to traditional registration, due to reductions in PRIA fees and data generation.

1. Proposed Section for Determining the Eligibility of a PIP To Qualify for Exemption

The Agency is proposing a new provision in Subpart E, 40 CFR 174.90, entitled “Determining eligibility for exemption.” This provision states that developers have two, non-mutually exclusive options to notify EPA that their PIP meets the exemption criteria: (1) Submit a self-determination letter that a PIP meets the exemption criteria, and (2) seek EPA confirmation that a PIP meets the exemption criteria. EPA confirmation can be sought instead of, in conjunction with, or subsequent to the submission of the self-determination letter. EPA believes that such a confirmation holds multiple potential benefits, including reduced barriers to international trade, increased public confidence in product safety, and affirmation for the developer that it has correctly determined that the PIP meets the criteria for exemption.

The provision further explains the relationship between the EPA confirmation processes and a letter of self-determination. Specifically, if a developer chooses to request EPA confirmation in accordance with 40 CFR 174.93 in conjunction with or subsequent to submitting a self-

determination letter in accordance with 40 CFR 174.91, the exemption is effective from the time at which the company receives confirmation of submission of the self-determination letter. The exemption remains effective if EPA affirms the developer’s determination that the PIP meets the exemption criteria and the self-determination is superseded by EPA’s written confirmation in response to the confirmation request. However, if at any time after submission of the self-determination, EPA determines that the PIP was not eligible for exemption under this proposed rule, the exemption will not have applied, and EPA may take enforcement against that product to ensure compliance with FIFRA. Similarly, FDA may take enforcement action if an incorrect self-determination was made by a developer of a PIP in a plant used for food or feed. As indicated in Unit VI.C.2., the developer is responsible for ensuring the accuracy of its self-determination.

Alternatively, in instances in which no prior self-determination has been provided to the Agency in accordance with 40 CFR 174.91 and the developer submits a request for confirmation to the Agency, the exemption applies only once EPA provides written notice to the developer confirming that the PIP meets the criteria for exemption. EPA reserves the right to assess or revisit at any time whether a PIP meets, or has met, the criteria for exemption regardless of whether the developer requests EPA confirmation. In particular, as exempt PIPs are still subject to 40 CFR 174.71, upon learning of any adverse effects (*e.g.*, injurious or deleterious levels in food), EPA has the authority to evaluate whether the PIP still meets the criteria for exemption. As described in the preamble of the July 19, 2001 **Federal Register** notice implementing 40 CFR 174.71 (66 FR 37772; July 19, 2001), reports involving food or feed (*i.e.*, those subject to enforcement under FFDCA) would be made to EPA, but EPA will share such reports with FDA. EPA and FDA will individually determine whether any action, including the possibility of enforcement, is necessary to protect the public health or the environment, and if so, what constitutes appropriate action based on their respective statutes (EPA—FIFRA, FDA—FFDCA). Therefore, 40 CFR 174.71 is a means of ensuring that EPA and FDA can address any potential hazard identified subsequent to self-determination or EPA confirmation that a PIP meets the requirements for exemption.

The provision also outlines instances in which an exemption determination

can be extended to subsequent variations of the PIP. For a PIP based on a sexually compatible plant created through biotechnology, EPA is proposing that a determination that the PIP meets the exemption criteria would be required for each modified gene and plant species combination, made either by the developer through a self-determination letter or by EPA through a confirmation request. However, EPA is aware that a plant species can comprise multiple varieties and does not intend for the PIP in each variety to require its own submission if a developer creates the same modification in different varieties. In this case, that developer would need to notify EPA only for the first modification in that species. The specific circumstances when an exemption determination is not required when modifying additional varieties of a plant species differ slightly depending on whether the developer is creating the same substance with the modification (e.g., native allele) or whether the developer is creating the same phenotype via a novel mutation. If the developer is creating the same substance with the modification (e.g., native allele) in other varieties, then subsequent notifications are not required so long as no additional modifications were made to the regulatory region. If the developer is creating the same phenotype by modifying the regulatory region via a novel mutation in other varieties, then subsequent notifications are not required. For example, if a developer modifies an existing gene in a tomato variety to create a native allele, this would require a determination; however, if the developer subsequently creates the same native allele in another tomato variety, the developer would not be required to submit a second determination request for the additional variety. Similarly, if a developer creates a differentially expressed gene, subsequent modifications in other varieties would not require a determination if the developer targets the same nucleic acid sequence (e.g., uses a guide RNA to target the same location in a gene in a CRISPR/Cas system) to create a mutation via double stranded DNA break repaired by non-homologous end joining. Finally, separate submission of a self-determination or request for EPA confirmation for purposes of the FFDCA exemption for a PIP proposed for use in food or feed is required only if it has not already been submitted under FIFRA. This is because the exemption eligibility determination process already requires the applicant to certify that the PIP meets the general qualifications for

exemption, which includes exemption under the FFDCA for PIPs used in food or feed. We envision at least one scenario in which a developer may need to submit a self-determination or request for EPA confirmation for the purposes of FFDCA but not FIFRA. That scenario arises when residues of a PIP will be in or on food imported into the United States, but the PIP is not intended to be sold or distributed for pesticidal use (e.g., PIP containing seed or plant sold for planting) in the United States (and thus is not subject to FIFRA regulation).

2. Proposed Process for a Letter of Self-Determination for a PIP To Qualify for Exemption

The Agency is proposing a new provision in Subpart E, 40 CFR 174.91, entitled "Submitting a letter of self-determination for exemption." The proposed provision describes the requirements and process of notifying EPA that the developer has determined (or "self-determined") that a PIP qualifies for exemption.

Self-determination letters may be submitted electronically (guidance for electronic submission can be found in Pesticide Registration Notice 2011-3 or any subsequent revision or replacement) or by paper submission. Proposed 40 CFR 174.91 includes information on how to format the letter and the required contents of the letter, including a statement certifying the developer's determination of exemption eligibility. If a developer does not have an EPA company number they will be required to obtain a company number prior to submission of a self-determination letter. EPA intends that self-determination letters will not be submitted under FIFRA section 33 (Pesticide Registration Improvement Extension Act of 2018 (PRIA)) and will not be subject to application fees.

In addition, this provision explains that a developer must submit its letter of self-determination prior to engaging in activities subject to FIFRA for the proposed PIP (e.g., distribution and sale of the PIP at issue), and the exemption does not apply until EPA confirms receipt of the self-determination. EPA notes that the developer is responsible at all times for ensuring its self-determination is accurate and if at any time EPA determines that a self-determination was wrongly made, or is no longer accurate due to the availability of new information that was not available at the time the self-determination was made, EPA and the FDA can take action to protect public health or the environment. This includes the possibility of enforcement under FIFRA or FFDCA. For

electronically submitted letters, this receipt confirmation occurs automatically upon submission and is considered equivalent to written confirmation of receipt. EPA will provide written confirmation of receipt within 30 days of receiving a self-determination letter via mail. EPA will notify FDA when it receives a letter of self-determination.

3. Proposed EPA Confirmation Submission Process for a PIP To Qualify for Exemption

The Agency is proposing a new provision in Subpart E, 40 CFR 174.93, entitled "Obtaining EPA confirmation of eligibility for the exemption." This provision describes the process through which a developer may seek confirmation from EPA whether a PIP meets the criteria for exemption codified in 40 CFR 174.21. A developer must submit information as outlined in 40 CFR 174.91 along with specific supporting documentation. For example, the information required to support the request for a PIP based on a sexually compatible plant created through biotechnology is described in proposed 40 CFR 174.95 and discussed in Unit VI.C.3. The provision also specifies that any claims of confidentiality for information submitted in the request for EPA confirmation must be made in accordance with the procedures outlined in 40 CFR 174.9.

In addition, the provision at 40 CFR 174.93 explains that upon receipt of the request, EPA will review the submission and determine whether the PIP meets all necessary criteria to be exempt under 40 CFR 174.21. The Agency proposes to notify the submitter in writing of its determination. The exemption goes into effect only once the developer receives EPA's confirmation in writing, unless a self-determination letter was previously submitted. Once a decision has been made that a PIP meets the criteria for exemption, this decision applies to all requirements under FIFRA, except for the adverse effects reporting under 40 CFR 174.71. As described in Unit VI.C.1., exempt PIPs are still subject to 40 CFR 174.71 and EPA reserves the right to reassess whether a PIP meets the criteria for exemption should the Agency learn of relevant information subsequent to confirming its eligibility to be exempt under 40 CFR 174.21. EPA intends for requests for EPA confirmation to be submitted using the current submission category (M009) and associated fee structure for a Non-FIFRA Regulated Determination under FIFRA section 33 (PRIA). Currently, under the Non-FIFRA Regulated Determination

category, the statutory time for EPA to review and make a determination is 120 days. The logistics of the submission for a request and EPA review times may change in the future if PRIA changes or a different structure for submissions is adopted.

4. Proposed Documentation for an Exemption for PIPs Based on Sexually Compatible Plants Created Through Biotechnology

The Agency is proposing a new provision in Subpart E, 40 CFR 174.95, entitled “Documentation for an exemption for a plant-incorporated protectant based on a sexually compatible plant created through biotechnology.” This proposed provision describes the specific information that must be documented for any PIPs based on sexually compatible plants created through biotechnology for which a developer is claiming an exemption. This provision serves two purposes. First, the provision describes the information that must be submitted to EPA, pursuant to 40 CFR 174.93, for confirmation that a PIP meets the exemption criteria. Second, the provision describes the information that any developer must maintain for 5 years pursuant to the recordkeeping requirements set forth in 40 CFR 174.73.

For PIPs based on sexually compatible plants created through biotechnology, the Agency is proposing that the information documented for recordkeeping and submitted during a request for EPA confirmation contain three main information elements: (1) Information on the biology of the plant; (2) a description of the pesticidal trait and how it was engineered; and (3) information on the molecular characterization of the PIP. The proposed information elements are necessary to ensure that the PIP based on a sexually compatible plant created through biotechnology meets the FIFRA and FFDCa proposed exemption criteria. Specifically, information that EPA proposes will be needed for each element is as follows.

The first proposed element, information on the biology of the plant, will include: The identity of the recipient plant, including genus and species; and if the PIP was derived from another plant species, the identity of the source plant, including genus and species, and information to demonstrate the recipient plant and the source plant are sexually compatible. EPA anticipates that information fulfilling the first element will typically be a narrative description to show that the PIP is found in plants that are sexually compatible with the recipient plant.

The proposed second element, description of the pesticidal trait and how it was engineered into the plant, will include a narrative description of the intended pesticidal function resulting from the modification of the plant and the technique used to make the modification (e.g., was the Cas enzyme stably integrated during development and if so was it segregated out of the final product). This information ensures that no unapproved ingredients remain in the final product. In products where the recipient plant is a food plant in which the levels of the pesticidal substance are commonly screened for in conventional breeding to ensure safe levels, the second element requires that the developer describe how conventional breeding practices have been and will be performed on the product proposed for exemption. This criterion can be fulfilled with a confirmation that the developer has screened its product for acceptable levels of the pesticidal substance (e.g., generally accepted safe content for solanine is 20–25 mg/100g of fresh potato weight). This criterion ensures that levels of the pesticidal substance are not present in the recipient food plant, as the plant is grown and harvested under normal conditions of use, at levels that are injurious or deleterious to human health as stated in the FFDCa proposed exemption criteria.

The proposed third element, molecular characterization of the PIP, includes two components. First, EPA is proposing to require the nucleotide sequence and the amino acid sequence of the PIP in the recipient plant, including a sequence comparison between the recipient plant and the relevant comparator (i.e., the source plant if a source plant was used or the unmodified plant if no source plant was used). For a plant-incorporated protectant where the regulatory region has not been modified, the sequence information will confirm that this is true. For PIPs where the regulatory region of an existing or inserted native gene has been modified, the second component is EPA’s proposal to require confirmation that the expression profile (i.e., tissues, developmental stages, and levels of expression) of the PIP is not outside that observed in plants that are sexually compatible with the recipient plant. In this circumstance, the developer must show that the highest level of expression of the PIP obtained under normal environmental conditions across the lifespan of the plant does not exceed the upper limit observed in a plant that is sexually compatible with the recipient plant. EPA envisions that

a developer can meet this requirement through either rationale or data confirmation: A developer can document a rationale regarding the expected phenotype given the type of modification made (e.g., is the modification meant to optimize an allele and therefore may result in a slight increase in expression but no change in expression pattern or has something more significant been done that could lead to altered expression patterns), or the developer can provide expression data examining the tissue/life stage in which expression is expected to be highest to corroborate its expectation. The extent of expression data required is expected to be directly correlated to the likelihood that the modification could lead to a novel expression profile. Information described under elements one through three will inform whether the PIP meets criteria (a) and (b) of proposed FIFRA exemption and criteria (a) and (b) of proposed exemption from the requirement of a tolerance.

D. What are the proposed recordkeeping requirements?

EPA proposes to add a new provision in Subpart D, 40 CFR 174.73, entitled “General recordkeeping requirements for exemptions.” This section describes the documentation and recordkeeping that must be done for exempted PIPs listed under 40 CFR 174.21(d). Specifically, in order for a PIP listed under 40 CFR 174.21(d) to be eligible for exemption, a developer must submit to EPA either a self-determination letter or a request for EPA confirmation that the PIP is eligible for exemption prior to engaging in FIFRA regulated activities. Accordingly, proposed 40 CFR 174.73 mandates that the developer maintain documentation of such a submission along with supporting information. Supporting information would include the information listed in the exemption specific section of subpart E. This documentation would need to be maintained for five years starting from the effective date of the exemption. Finally, proposed 40 CFR 174.73 states that this information must be made available to EPA upon request. This request may occur as part of routine enforcement activities (e.g., auditing, inspections) conducted by EPA to ensure compliance with EPA regulations or subsequent to EPA receiving an adverse effects report.

E. What is the proposed clarification to general qualifications for exemptions?

In 2001, EPA developed “General Qualifications for Exemptions” at 40 CFR 174.21, which describes criteria that are required for any PIP to be

exempt from the requirements of FIFRA, with the exception of the adverse effects reporting requirement at 40 CFR 174.71. These criteria were developed at the same time as the FIFRA and FFDCA exemptions for PIPs derived through conventional breeding and thus were drafted with reference to those specific sections. The Agency is proposing edits to 40 CFR 174.21 to clarify the applicability of this framework to other PIP exemptions, including the language in the proposal.

For paragraph (a), this revision simply clarifies that this paragraph is specific to the pesticidal substance of the PIP. This update is necessary to avoid confusion over the current dual use of the word “plant-incorporated protectant” in 40 CFR 174.21 to refer to both the pesticidal substance and the PIP as a whole, per the definition in 40 CFR 174.3. For paragraph (b), the current reference to sections 40 CFR 174.507 through 174.508 only allows for a PIP to be exempt if the residues of the PIP are nucleic acids or come from a sexually compatible plant. This restriction was established when the only exempt PIPs were from sexually compatible plants. EPA is proposing to revise paragraph (b) to refer to subpart W, rather than the specific sections. For paragraph (c), the current reference to 40 CFR 174.705 only allows for a PIP to be exempt if the inert ingredients are from sexually compatible plants. Again, this restriction was established when the only exempt PIPs were from sexually compatible plants. Although EPA is not proposing an inert ingredient exemption specific to this proposal, EPA believes it is important to add flexibility to the regulatory text to allow PIPs to be exempt based on other inert ingredient exemptions that EPA may establish in subpart X in the future. Thus, EPA is proposing to revise paragraph (c) to refer to subpart X, rather than the specific section of 40 CFR 174.705. Finally, EPA proposes to add a new paragraph (d) to section 40 CFR 174.21 to account for the proposed exemption eligibility determination process (Unit VI.C.) and proposed recordkeeping requirements (Unit VI.D.). This paragraph specifies that for PIPs listed in the subsequent subparagraph (*i.e.*, subparagraph (d)(i)), compliance with recordkeeping and providing an exemption eligibility determination to EPA is a requirement of the exemption. The addition of paragraph (d) does not impact the current exemption under section 40 CFR 174.25 for PIPs from sexually compatible plants, because PIPs from sexually compatible plants (or the proposed amended title, PIPs from

sexually compatible plants through conventional breeding) are not identified in paragraph (d).

F. What is the clarification of exemptions for sexually compatible PIPs?

In 2001, EPA exempted one category of PIPs from all FIFRA requirements, with the exception of the adverse effects reporting requirement at 40 CFR 174.71. PIPs derived through conventional breeding from plants sexually compatible with the recipient plant were exempted from FIFRA, and a companion FFDCA exemption from the section 408 requirement of a tolerance for residues of this category of PIPs was also issued. Conventional breeding is defined at 40 CFR 174.3 as “the creation of progeny through either: the union of gametes, *i.e.*, syngamy, brought together through processes such as pollination, including bridging crosses between plants and wide crosses, or vegetative reproduction. It does not include use of any of the following technologies: Recombinant DNA; other techniques wherein the genetic material is extracted from an organism and introduced into the genome of the recipient plant through, for example, micro-injection, macro-injection, micro-encapsulation; or cell fusion.”

The Agency is proposing to clarify the relationship between the proposal on PIPs based on sexually compatible plants created through biotechnology and the exemptions currently at 40 CFR 174.25, “Plant-incorporated protectant from sexually compatible plant,” and 40 CFR 174.508 “Pesticidal substance from sexually compatible plant; exemption from the requirement of a tolerance.” To this end, EPA would insert “created through conventional breeding” immediately after the subject of the exemption (*e.g.*, “pesticidal substance”) in each section title, and insert an additional criterion into 40 CFR 174.25 and 174.508 as follows:

“(c) The genetic material is transferred from the source plant to the recipient plant only through conventional breeding.”

This clarification would explicitly state in the title and criteria at 40 CFR 174.25 and 174.508 the condition underlying the rationale for exemption offered in the preamble of the July 19, 2001 **Federal Register** notice implementing these paragraphs (66 FR 37772; July 19, 2001). Although 40 CFR 174.25 has always meant “only through conventional breeding,” this is a necessary clarification now given that the proposed amended definition for “sexually compatible” states that “a viable zygote can be formed through the

union of two gametes through conventional breeding,” which would modify the existing definition that states that “a viable progeny is formed only through the union of two gametes through conventional breeding.” The clarification would also explicitly indicate how proposed sections 40 CFR 174.26 and 174.541 on PIPs based on sexually compatible plants created through biotechnology relate to the existing exemptions for PIPs created through conventional breeding from sexually compatible plants at 40 CFR 174.25 and 174.508. The Agency is not proposing similar modifications at 40 CFR 174.705, and instead proposes to expand the scope of that exemption to include both conventional breeding and biotechnology, as described in Unit VI.G.

G. What is the proposed expansion of the inert ingredient exemption at 40 CFR 174.705 to include intermediary substances initiated through biotechnology?

1. *Description of the expansion.* EPA is proposing to expand the scope of the existing inert ingredient exemption at 40 CFR 174.705 to include inert ingredients that are intermediary substances initiated through biotechnology so long as they still meet the existing criteria. In the 2001 preamble promulgating 40 CFR 174, EPA stated “with regard to the enzymes, precursors, or intermediates in biosynthetic pathways necessary for anabolizing the pesticidal substance, EPA at this time considers them to be part of the plant-incorporated protectant because the substance is intended to “ensure the presence of the active ingredient”—*i.e.*, it is an inert ingredient.” Although the biochemical pathway may be initiated by a modification created through biotechnology, EPA believes the plant-produced intermediaries leading to the ultimate production of the pesticidal substance meet the scientific rationale of the existing inert ingredient exemption at 40 CFR 174.705. This is because EPA’s proposed exemption at 40 CFR 174.26 provides developer flexibility by allowing changes to the nucleic acid sequence of the PIP as long as those modifications still result in the same pesticidal substances exempt under 40 CFR 174.25, thereby maintaining the integrity of such biochemical pathways described in the 2001 preamble. Therefore, although the technique used to initiate such a biochemical pathway may be different, the intermediary substances themselves remain the same.

2. *Risk analysis.* EPA believes the risk analysis at Unit VI.A.3. supporting the proposal for exemption from FIFRA requirements and the risk analysis at Unit VI.B. supporting the FFDC section 408 proposal for exemption from the requirement of a tolerance also supports the exemption from FIFRA and the FFDC for inerts that meet the criteria under the proposed expansion of 40 CFR 174.705, because these substances would be endogenous to plants in sexually compatible populations and thus would not present novel exposures should inert ingredient intermediaries be initiated through a modification using biotechnology.

VII. Request for Comment

EPA is seeking public comment on all aspects of this proposed rule, including comments on the specific points discussed in this unit and the specific points raised in Units V. and VI. of this proposal.

A. What inert ingredients could be present in PIPs based on sexually compatible plants created through biotechnology?

An “inert ingredient” is defined in 40 CFR 174.3 to mean “any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.” Additionally, in 2001 EPA stated that “with regard to the enzymes, precursors, or intermediates in biosynthetic pathways necessary for anabolizing the pesticidal substance, EPA at this time considers them to be part of the plant-incorporated protectant because the substance is intended to “ensure the presence of the active ingredient”—*i.e.*, it is an inert ingredient.” As stated in Unit VI.G., the Agency is expanding the current inert ingredient exemption at 40 CFR 174.705 to be inclusive of both conventional breeding and biotechnology in order to account for potential intermediary substances as described in the 2001 quote that would ultimately lead to the production of the pesticidal substance.

However, outside of these intermediary substances, the Agency does not anticipate other types of inert ingredients (*e.g.*, herbicide tolerance) in PIPs based on sexually compatible plants created through biotechnology. Previous biotechnology approaches that relied on DNA constructs were constructed with the genetic material

encoding for both the active and the inert ingredient. These DNA constructs ensured that the inert ingredient could be used to confirm the plants or cells that successfully integrated the genetic material encoding for the active ingredient. However, to create PIPs based on sexually compatible plants created through biotechnology, modifications coding for non-pesticidal traits in transgenic PIPs (*e.g.*, herbicide resistance) would instead be incorporated into the recipient plant genome independent of the active ingredient. Because these events occur independently the modification cannot confirm or ensure the presence of the active ingredient. The modification therefore would not meet the definition of an inert ingredient under 40 CFR 174.3 because it is an independent, non-pesticidal trait not regulated under FIFRA. EPA expects that any ingredients intentionally added during the development of PIPs based on sexually compatible plants created through biotechnology that are specific to the production of the active ingredient (*e.g.*, guide RNA, DNA nuclease) and that could function as an inert ingredient would either be transiently transformed or would be removed (*e.g.*, through segregation of the trait) during the breeding process and that if these ingredients have not been removed from the final product the product would not meet the criteria at proposed under the new 40 CFR 174.26 and would not qualify for the new exemptions.

The Agency therefore requests comment on whether there are any inert ingredients other than the intermediary substances described in the 2001 quote that will remain in the final plant products containing PIPs based on sexually compatible plants created through biotechnology. If inert ingredients other than the intermediary substances described in the 2001 quote are identified in the responses to the previous request, the Agency also requests comment as to whether the inert ingredients in PIPs based on sexually compatible plants created through biotechnology require the proposal of an exemption that would be specific to those created through biotechnology and would allow developer flexibility in the nucleic acid sequence. If the Agency receives comments that indicate inert ingredients other than the intermediary substances described in the 2001 quote may be present in the final plant product and/or that developer flexibility in the nucleic acid sequence of inert ingredients would be beneficial, the

Agency will consider finalizing the proposed rule with exemptions under FIFRA and FFDC for inert ingredients derived through biotechnology from sexually compatible plants. These exemptions would be based on the proposed exemptions 40 CFR 174.26 and 174.541 in that the use of biotechnology is permitted and only inert ingredients composed of genetic material that is derived from sexually compatible plants would be exempt. The Agency is not currently considering an exemption for potential inert ingredients that are derived from sources that are not sexually compatible with the recipient plant (*e.g.*, Cas proteins).

B. What process should EPA use to provide notice that a PIP no longer meets the criteria for exemption if new information is provided?

EPA is proposing to exempt PIPs based on sexually compatible plants created through biotechnology from regulation under FIFRA, except for the adverse reporting effects at 40 CFR 174.71. In the event EPA learns of information that affects a previous determination that a PIP based on a sexually compatible plant created through biotechnology meets the criteria, EPA will reconsider the new information and provide a new determination in writing whether the PIP continues to meet the criteria for exemption. EPA requests comment on whether the process outlined is detailed enough.

C. Should EPA consider other approaches for its confirmation process?

EPA is proposing that the exemption of PIPs based on sexually compatible plants created through biotechnology include a process through which developers of PIPs based on sexually compatible plants created through biotechnology submit either a self-determination letter or request confirmation that their PIP meets the criteria for exemption. EPA seeks comment on whether the Agency should consider different approaches for its proposed exemption eligibility determination process. For example, one alternative process could be to require mandatory EPA confirmation so that all developers must submit information to EPA for EPA confirmation that their PIP meets the exemption criteria prior to engaging in activities subject to FIFRA. EPA requests comment on whether or how such a mandatory approach could be workably implemented, and whether such an approach would be useful or justified.

This alternative process would follow the same submission procedures that are outlined in proposed 40 CFR 174.93, and the information required to determine the eligibility of exemption would remain the same as outlined in proposed 40 CFR 174.95. Another alternative could be a voluntary confirmation process for all PIP products exempted under the proposed rule similar to that in USDA's final rule titled "Movement of Certain Genetically Engineered Organisms." (85 FR 29790; May 18, 2020). Only those developers who seek EPA's confirmation would be required to submit to the Agency information and data sufficient to establish that their PIPs are eligible under the proposed exemptions. Developers who do not seek EPA confirmation would not be required to submit any documentation to EPA (and thus this alternative would be different from EPA's proposed process through which developers submit either a self-determination letter or request confirmation that their PIP meets the criteria for exemption). EPA requests comment on whether or how such a voluntary approach could be workably implemented (e.g., should the recordkeeping requirements at proposed 40 CFR 174.73 be required for developers who do not submit for EPA confirmation) and whether such an approach would be useful or justified?

D. Is EPA's intent behind the use of the terms "native" and "never derived" clear?

The Agency is proposing to define "native gene" to mean "a gene that is identified in the recipient plant or plants that are sexually compatible with the recipient plant; and has never been derived from a source that is not sexually compatible with the source plant." The phrase "has never been derived from a source that is not sexually compatible with the source plant" is meant to clarify that a PIP would not qualify for the proposed exemption if the gene was introduced into the genome of the source plant through transgenic technology, as those genes may not be representative of the shared genetic information between sexually compatible plants. For example, bacterial endotoxin genes (e.g., from the source *Bacillus thuringiensis*) are a commonly engineered pesticidal trait, but EPA does not intend for these genes to be considered part of the sexually compatible gene pool nor does EPA intend for these genes to qualify for the proposed exemption. However, EPA is also aware that horizontal gene transfer from *Agrobacterium* to plants can occur and that in some cases, like

the domesticated sweet potato, it may result in a variant so commonly found that it could be considered part of the gene pool. It is the Agency's intent to exclude substances that plant breeders do not have experience with (e.g., a bacterial endotoxin not found in a food plant) from the proposed exemption. Given the explanation of the intent behind the terms "native" and "never derived," EPA seeks comment on whether the intent behind the use of the terms is clear. The Agency also seeks comment on whether alternative phrasing rather than "native" would be more appropriate. Similarly, the Agency seeks comment on whether a definition for "native gene" or "native allele" is necessary, or if the criteria included in these definitions should instead be incorporated into the exemption text.

E. Should EPA issue a clarifying exemption for loss-of-function traits that result in pesticidal effects?

As described in Unit II.A., the Agency considers the modification of existing genes in a plant to elicit a loss-of-function trait in order to confer a pesticidal effect to be a pesticide. EPA recognizes that this scenario is different from transgenic PIPs that traditionally produce a pesticidal substance, e.g., PIPs that produce a protein or other substance that kill a pest. In many instances, for loss-of-function traits, the genetic material of the recipient plant has been altered to reduce the production of a substance that would otherwise facilitate the susceptibility of that plant to a pathogen; therefore, the reduction or elimination of that substance has a mitigating or pesticidal effect. For PIPs created through conventional breeding, EPA considers these loss-of-function traits to be included in the existing exemption at 40 CFR 174.25. It is also EPA's intention that loss-of-function traits created through biotechnology are included under the proposed exemption at 40 CFR 174.26 so long as the exemption criteria are met (e.g., only substances produced that are found in sexually compatible plants).

In situations where the existing plant genes are acting as the pesticidal substance, EPA recognizes that it can be confusing under the current regulatory definitions in 40 CFR 174.3 to interpret the pesticidal substance and the genetic material necessary for the production of the pesticidal substance as applying to the same thing. Given that it is potentially confusing to refer to both of these as a "pesticidal substance" interchangeably, EPA requests comment as to whether a clarifying exemption specific to "loss-of-function PIPs,"

where the genetic material is the pesticidal substance, would aid in reducing ambiguity over the use of the term "pesticidal substance" in the regulatory text. EPA proposes to accomplish this by separating exempt PIPs into two categories, those where the gene product is the pesticidal substance and those where the genetic material itself is the pesticidal substance. Similar to the existing exemption at 40 CFR 174.25 and the proposed exemption at 40 CFR 174.26, the clarifying exemption specific to loss-of-function PIPs would be written to limit permissible modifications to those that do not result in the production of a modified substance. In other words, only the reduced expression of an unmodified protein or the elimination of the unmodified protein would be permissible. This is to ensure (1) limitation of substances to only those with which plant breeders have experience, (2) the applicability of EPA's risk assessment for the exemption at 40 CFR 174.25 and the risk assessment for the proposed exemption at 40 CFR 174.26 to the proposed "loss-of-function PIPs" exemption, and (3) that if the reduced substance is in fact a pesticidal substance (or its reduction leads to an increase of another substance that is pesticidal) it is covered by either the existing tolerance exemption at 40 CFR 174.508 or the proposed tolerance exemption at 40 CFR 174.541. It is also important to note that when the loss of function of a gene intentionally results in the increase in production of another gene which ultimately produces a pesticidal substance, this PIP would fall under either the existing exemption at 40 CFR 174.25 or the proposed exemption at 40 CFR 174.26. If EPA were to issue an exemption for loss-of-function PIPs, EPA would no longer include the category at proposed 40 CFR 174.26(a)(2)(iv). In addition, EPA also requests comment on how a separate exemption or exemptions (if any) specific to loss-of-function PIPs might be implemented. Should such a separate exemption(s) be technique-specific (e.g., should it be specific to loss-of-function PIPs created through conventional breeding?) or should there be one exemption that covers loss of function PIPs regardless of the technique used in their creation?

VIII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced

within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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IX. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's cost analysis (Ref. 2).

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared is assigned EPA ICR No. 2619.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collection activities in this proposed rule are associated with the proposed exemption eligibility process (*i.e.*, self-determination or request for EPA-confirmation, and associated recordkeeping) that would be made available as an alternative to the existing pesticide registration and tolerance activities that are already approved by OMB under OMB Control No. 2070–0060 (EPA ICR No. 0277). As such, the ICR accompanying this proposed rule is intended to amend that existing ICR at the final rule stage, incorporating the information collection activities for the exemption and related estimated burden.

Respondents affected entities: See Unit I.A.

Respondent's obligation to respond: Mandatory to obtain the exemption (40 CFR part 174, as proposed).

Estimated number of respondents: 1.

Frequency of response: Once.

Total estimated burden: 14 hours (per EPA determination). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,487 (per EPA determination), includes \$0 annualized capital or operation & maintenance costs.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 9, 2020. EPA will respond to any ICR-related comments received on the proposed ICR amendment when issuing the final rule.

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b), 5 U.S.C. 601 *et seq.*, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. In making this determination, EPA believes that the impact of concern is any adverse economic impact, and that an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The factual basis for this determination is presented in the small entity impact analysis prepared as part of the cost analysis for this proposed rule (Ref. 2), which is summarized in Units I.E. and VI.A.4., and a copy is available in the docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

The effect of the rule is to reduce costs to developers of PIPs based on sexually compatible plant created through biotechnology, and the cost savings per product are approximately \$444,000–\$459,000. The cost savings per product would be realized when a letter of self-determination is sent. The proposed exemption for PIPs based on sexually compatible plants created through biotechnology reduces the cost associated with meeting regulatory requirements and so removes a potential barrier to market entry for small entities. Of the entities likely to develop PIPs based on sexually compatible plants created through biotechnology, EPA currently estimates that approximately 80% are small entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

Any comments regarding the potential impacts on small entities from this action should be submitted to the Agency in the manner specified under **ADDRESSES**.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action is not expected to impose an enforceable duty on any state, local or tribal governments, and the requirements imposed on the private sector are not expected to result in annual expenditures of \$100 million or more for the private sector. Accordingly, EPA has determined that the requirements of UMRA sections 202,

203, 204, or 205 do not apply to this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this proposed rule.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate a health or safety risk.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer Advancement Act (NTTAA)

NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this proposed action because it would not impose any technical standards requiring Agency consideration of voluntary consensus standards. This regulation proposes the

types of information to be submitted in a self-determination letter or EPA confirmation request concerning the exemption of PIPs based on sexually compatible plants created through biotechnology, but does not propose to require specific methods or standards to generate that information.

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

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

L. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted the draft proposed rule to the Secretary of the United States Department of Agriculture (USDA) and the FIFRA Scientific Advisory Panel (SAP) for review. A draft of the proposed rule was also submitted to the appropriate Congressional Committees.

M. Executive Order 13874: Modernizing the Regulatory Framework for Agricultural Biotechnology Products

This action is intended to further implement section 4(b) of Executive Order 13874 (84 FR 27899, June 11, 2019). If this proposal is made final, the final rule may promote future innovation and competitiveness by efficiently exempting through regulation qualifying PIPs based on sexually compatible plants created through biotechnology that meet the FIFRA and FFDCA standards for exemption.

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plant-incorporated protectants, Reporting and recordkeeping requirements.

Andrew Wheeler, Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 174.3 by adding in alphabetical order the following definitions to read as follows:

§ 174.3 Definitions

* * * * *

Gene, and other grammatical variants such as “genic,” means a functional unit of heritable genetic material that is comprised of the genetic material necessary for the production of a substance.

* * * * *

Native allele means a variant of a native gene that is identified in the genetic diversity of plants sexually compatible with the recipient plant.

Native gene means a gene that is identified in the recipient plant or plants sexually compatible with the recipient plant; and has never been derived from a source that is not sexually compatible with the source plant.

* * * * *

Sexually compatible, when referring to plants, means a viable zygote can be formed through the union of two gametes through conventional breeding.

* * * * *

■ 3. Revise § 174.21 to read as follows:

§ 174.21 General qualifications for exemptions.

A plant-incorporated protectant is exempt from the requirements of FIFRA, other than the requirements of § 174.71, if it meets the exemption criteria in paragraphs (a) through (d) of this section. Plant-incorporated protectants that are not exempt from the requirements of FIFRA under this subpart are subject to all the requirements of FIFRA.

(a) The pesticidal substance from the plant-incorporated protectant meets the exemption criteria listed in at least one of the sections in §§ 174.25 through 174.50.

(b) When the plant-incorporated protectant is intended to be produced and used in a crop used as food, the residues of the pesticidal substance of the plant-incorporated protectant are either exempted from the requirement of a tolerance under FFDCA (21 U.S.C. 321 *et seq.*) as listed in subpart W of this part, or no tolerance would otherwise be required.

(c) Any inert ingredient that is part of the plant-incorporated protectant is listed as an approved inert ingredient in subpart X of this part.

(d) For plant-incorporated protectants listed in the subparagraphs below, the exemption applies only if the developer is compliant with the general record keeping requirements specified in § 174.73 and only after compliance with the relevant eligibility determination procedures specified in § 174.90:

(1) Plant-incorporated protectant based on a sexually compatible plant created through biotechnology.

(2) [Reserved]
■ 4. Amend § 174.25 by:

- a. Revising the section heading;
- b. Revising the introductory paragraph; and
- c. Adding paragraph (c).

The revisions read as follows:

§ 174.25 Pesticidal substance from a plant-incorporated protectant from a sexually compatible plant created through conventional breeding.

The pesticidal substance from a plant-incorporated protectant from a sexually compatible plant created through conventional breeding is exempt if all of the following conditions are met:

* * * * *

(c) The genetic material is transferred from the source plant to the recipient plant only through conventional breeding.

■ 5. Add § 174.26 to read as follows:

§ 174.26 Pesticidal substance from a plant-incorporated protectant based on a sexually compatible plant created through biotechnology.

The pesticidal substance from a plant-incorporated protectant based on a sexually compatible plant created through biotechnology is exempt if all of the following conditions are met:

(a) The pesticidal substance is created through biotechnology from either an insertion of new genetic material as discussed in paragraph (a)(1) of this section or a modification of existing genetic material as discussed in paragraph (a)(2) of this section.

(1) A native gene is engineered into a non-genic location of the recipient plant genome, resulting in a pesticidal substance identical to the pesticidal substance identified in the source plant.

(2)(i) The existing native gene in the recipient plant is modified to alter the amount of pesticidal substance produced without altering the identity of the pesticidal substance produced; or

(ii) The genetic material that encodes the substance of the existing native gene is modified to result in a pesticidal substance that is identical to the pesticidal substance encoded by a native allele of that gene; or

(iii) The existing genetic material is modified pursuant to both (i) and (ii).

(iv) The existing native gene in the recipient plant is modified to lose function through the reduction or elimination of the substance encoded by that gene.

(b) The pesticidal substance is not expressed at higher levels, in different tissues, or at different developmental stages than identified in a plant that is sexually compatible with the recipient plant.

(c) This exemption does not apply until the requirements in subpart E of this part have been met.

■ 6. Add § 174.73 to read as follows:

§ 174.73 General recordkeeping requirements for exemptions.

For 5 years, starting with the effective date of a plant-incorporated protectant exemption, any person who produces an exempt plant-incorporated protectant listed under § 174.21(d) must do both of the following:

(a) Maintain documentation of either the letter of self-determination or the request for EPA confirmation along with all supporting documentation for the specific exemption listed in subpart E.

(b) Make the documentation of exemption eligibility available to EPA upon request.

■ 7. Amend subpart E to read as follows:

Subpart E—Exemption Eligibility Determination Process and Requirements

§ 174.90 Determining Eligibility for Exemption

(a) *Options for determining eligibility.* For a plant-incorporated protectant listed under § 174.21(d), the developer must do at least one of the following actions to be eligible for the exemption in § 174.21:

(1) *Self-determination.* A developer may submit a letter of self-determination in accordance with § 174.91.

(2) *Request for EPA confirmation of eligibility.* A developer may submit a request for EPA confirmation of eligibility in accordance with § 174.93.

(b) *Where to submit a letter of self-determination or request for EPA confirmation.* A letter of self-determination or a request for EPA confirmation of eligibility must be submitted to the Office of Pesticide Programs' Document Processing Desk at the appropriate address as set forth in § 150.17(a) or (b) of this chapter, with the relevant "Attention" line: "Attention: Plant-Incorporated Protectant Exemption Self-Determination" or "Attention: Plant-Incorporated Protectant Request for Confirmation of Exemption Eligibility." [placeholder for future instructions covering electronic submissions].

(c) *Overlapping determinations of eligibility.* A developer may elect to submit a letter of self-determination as well as a request for EPA confirmation of eligibility concurrently or at a later time. If the developer so elects, the letter of self-determination will remain in effect while EPA evaluates the request for confirmation of eligibility.

(d) *Revisiting eligibility determination.* If, at any time after the letter of self-determination is submitted or EPA issues a confirmation of eligibility, EPA becomes aware of information indicating that the exempt plant-incorporated protectant no longer meets the criteria for exemption (e.g., adverse effects reports submitted under § 174.71) or that the self-determination was incorrect, EPA will notify the original submitter in writing of EPA's intention to initiate a review of eligibility for exemption and may request additional information from the developer in order to evaluate that eligibility for exemption. Upon conclusion of its review, EPA will notify the developer in writing of its determination whether the plant-incorporated protectant meets the exemption criteria and any actions that will be required should the plant-incorporated protectant be found to not meet the exemption criteria. Under those circumstances, the plant-incorporated protectant may be considered to be noncompliant with FIFRA and subject to possible enforcement by EPA.

(e) *Extension of exemption to subsequent variations of the plant-incorporated protectant.*

(1) *Plant-incorporated protectant based on a sexually compatible plant created through biotechnology.* A letter of self-determination or EPA's confirmation that the plant-incorporated protectant based on a sexually compatible plant created through biotechnology meets the criteria for exemption applies to subsequent engineering of that plant-incorporated protectant by the submitter into other varieties of that same plant species as long as the submitter is doing one of the following:

(i) Producing the identical substance as in the exempt plant-incorporated protectant, so long as no modifications were made to the regulatory regions.

(ii) Creating the same phenotype as in the exempt plant-incorporated protectant by targeting the same nucleic acid sequence in the regulatory region to result in a mutation via double-strand DNA break repaired by non-homologous end joining.

(iii) For subsequent engineering events that do not meet either criterion (e)(1)(i) or (1)(ii), a letter of self-determination or request for EPA determination must be submitted.

(2) [Reserved]

§ 174.91 Submitting a letter of self-determination for exemption.

A developer who elects to self-determine eligibility for the exemption

of a plant-incorporated protectant listed under § 174.21(d) must comply with all of the following requirements.

(a) *When to submit a letter of self-determination.* A letter of self-determination for an exemption must be submitted to EPA prior to engaging in activities subject to FIFRA.

(b) *Contents of a letter of self-determination.* The letter of self-determination must:

(1) Provide the name and contact information for the submitter (including phone and email address), company name, or other affiliation.

(2) Identify the plant-incorporated protectant and the following exemption-specific information for the exemption for which eligibility is self-determined:

(i) *Plant-incorporated protectant based on a sexually compatible plant created through biotechnology.* Cite the paragraph under §§ 174.26 or 174.541 that is applicable to the PIP (i.e., (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv)).

(ii) [Reserved]

(3) Include the following statement of certification, filling in the information described in italics:

"I, [name of submitter], on behalf of [name of company] am submitting this Plant-Incorporated Protectant Exemption Self-Determination consistent with the provisions of 40 CFR part 174. I hereby confirm that the plant-incorporated protectant known as [name of the plant-incorporated protectant] is eligible under 40 CFR 174.21 to be exempt from the requirements of FIFRA, other than the requirements of 40 CFR 174.71 and 174.73. I understand that it is a violation of 18 U.S.C. 1001 to willfully make any false statement to EPA. I further understand that if this self-determination is not consistent with the provisions of 40 CFR part 174, this plant-incorporated protectant product may not be exempt from the requirements of FIFRA, and [name of company] may be subject to enforcement actions and penalties under FIFRA sections 12, 13, and 14, 7 U.S.C. 136j, 136k, and 136l. Moreover, I also understand that if this self-determination is not consistent with 40 CFR part 174, the residues of this plant-incorporated protectant may not be exempt from the requirement of a tolerance under the FFDCA, and [name of company], as well as foods containing such residues, may be subject to enforcement actions and penalties under Chapter III of the FFDCA, 21 U.S.C. 331 *et seq.*"

(4) The statement must be dated and signed by an authorized representative of the developer of the plant-incorporated protectant.

(c) *EPA response.* For electronic submissions, EPA will provide electronic confirmation of receipt immediately. Electronic confirmation shall be equivalent to written confirmation. For submissions by mail, written confirmation of receipt within 30 business days of receipt of a letter of self-determination.

(d) *Effective date of exemption.* The exemption does not apply until EPA confirms receipt of the letter of self-determination.

§ 174.93 Obtaining EPA confirmation of eligibility for the exemption.

A developer who elects to request EPA confirmation of eligibility for exemption of a plant-incorporated protectant listed under § 174.21(d) must comply with all of the following requirements.

(a) *When to submit a request for EPA confirmation.* Unless the developer has received confirmation of receipt of a letter of self-determination, the request for EPA confirmation must be submitted prior to engaging in activities subject to FIFRA.

(b) *Contents of a request for EPA confirmation of exemption eligibility.* The request must contain information as specified in § 174.91(b) and supporting documentation demonstrating that the plant-incorporated protectant meets the criteria for the exemption, as specified in exemption-specific sections of this subpart. Any claims of confidentiality for information submitted in the request for EPA confirmation must be made in accordance with the procedures outlined in § 174.9 of subpart A.

(c) *EPA review and response.* Upon receipt of a request, EPA will review and evaluate the information provided to determine whether the plant-incorporated protectant meets the exemption criteria in § 174.21. EPA may require additional information to assess whether a plant-incorporated protectant meets the criteria for exemption. EPA will notify the submitter in writing of its determination. If EPA determines that the plant-incorporated protectant does not meet the criteria for exemption, EPA will notify the submitter in writing of any actions that will be required.

(d) *Effective date for the EPA confirmed exemption.* If the plant-incorporated protectant is not already exempt pursuant to the self-determination process under § 174.91, this exemption *applies* once EPA notifies the submitter in writing, confirming that the plant-incorporated protectant meets the criteria for exemption.

§ 174.95 Documentation for an exemption for a plant-incorporated protectant based on a sexually compatible plant created through biotechnology.

A developer requesting EPA confirmation of exemption eligibility for a plant-incorporated protectant from a sexually compatible plant created

through biotechnology pursuant to § 174.93 must submit the information in the following paragraphs to EPA along with its request for exemption confirmation. Any developer required to maintain records under § 174.73 must maintain the following documentation.

(a) Biology of the plant.

(1) The identity of the recipient plant, including genus and species.

(2) If the plant-incorporated protectant was derived from another plant species, provide the identity of the source plant including genus and species and information to demonstrate the recipient plant and the source plant are sexually compatible.

(b) Description of the pesticidal trait and how the trait was engineered into the plant. If the pesticidal substance is a known mammalian toxin or toxicant (e.g., solanine) describe how conventional breeding practices are being used to ensure it does not exceed safe levels in the recipient food plant.

(c) Molecular characterization of the plant-incorporated protectant.

(1) The nucleotide sequence and the amino acid sequence of the plant-incorporated protectant in the recipient plant, including a sequence comparison between the recipient plant and the relevant comparator (*i.e.*, the source plant if a source plant was used or the unmodified plant if no source plant was used).

(2) For a plant-incorporated protectant where the regulatory region of an existing or inserted native gene has been modified, confirmation that the expression level does not exceed that found in a sexually compatible plant and the plant-incorporated protectant is not expressed in tissues or developmental stages outside of that observed in a plant that is sexually compatible with the recipient plant.

■ 8. Amend § 174.508 by:

■ a. Revising the section heading,

■ b. Revising the introductory paragraph,

■ c. Designating paragraph (c) as paragraph (d), and

■ d. Adding a new paragraph (c).

These revisions read as follows:

§ 174.508 Pesticidal substance from a plant-incorporated protectant from a sexually compatible plant created through conventional breeding; exemption from the requirement of a tolerance.

Residues of a pesticidal substance from a plant-incorporated protectant from a sexually compatible plant created through conventional breeding are exempt from the requirement of a

tolerance if all the following conditions are met:

* * * * *

(c) The genetic material is transferred from the source plant to the recipient plant only through conventional breeding.

(d) The residues of the pesticidal substance are not present in food from the plant at levels that are injurious or deleterious to human health.

■ 9. Add § 174.541 to read as follows:

§ 174.541 Pesticidal substance from a plant-incorporated protectant based on a sexually compatible plant created through biotechnology; exemption from the requirement of a tolerance.

Residues of a pesticidal substance from a plant-incorporated protectant based on a sexually compatible plant created through biotechnology are exempt if all of the following conditions are met:

(a) The pesticidal substance is created through biotechnology from either an insertion of new genetic material as discussed in paragraph (1) or a modification of existing genetic material as discussed in paragraph (2).

(1) A native gene is engineered into a non-genic location of the recipient plant genome, resulting in a pesticidal substance identical to the pesticidal substance identified in the source plant.

(2)(i) The existing native gene in the recipient food plant is modified to alter the amount of pesticidal substance produced without altering the identity of the pesticidal substance produced; or

(ii) The genetic material that encodes the substance of the existing native gene is modified to result in a pesticidal substance that is identical to the pesticidal substance encoded by a native allele of that gene; or

(iii) The existing genetic material is modified pursuant to both (i) and (ii).

(iv) The existing native gene in the recipient plant is modified to lose function through the reduction or elimination of the substance encoded by that gene.

(b) The residues of the pesticidal substance are present only in tissues and developmental stages identified in a plant that is sexually compatible with the recipient food plant, and do not exceed levels found within that plant, as long as those levels are not injurious or deleterious to human health.

(c) This exemption does not apply until the requirements in subpart E of this part have been met.

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Part V

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Base Erosion and Anti-Abuse Tax; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9910]

RIN 1545-BP36

Base Erosion and Anti-Abuse Tax**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the base erosion and anti-abuse tax imposed on certain large corporate taxpayers with respect to certain payments made to foreign related parties. The final regulations affect corporations with substantial gross receipts that make payments to foreign related parties.

DATES:

Effective Date: The final regulations are effective December 8, 2020.

Applicability Dates: For dates of applicability, see §§ 1.59A-10 and 1.6031(a)-1(f)(2).

FOR FURTHER INFORMATION CONTACT:

Sheila Ramaswamy or Karen Walny at (202) 317-6938 or Azeka J. Abramoff at (202) 317-3800 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

The base erosion and anti-abuse tax (“BEAT”) in section 59A was added to the Internal Revenue Code (the “Code”) by the Tax Cuts and Jobs Act, Public Law 115-97 (2017), which was enacted on December 22, 2017. Section 59A imposes on each applicable taxpayer a tax equal to the base erosion minimum tax amount for the taxable year. On December 6, 2019, the Department of the Treasury (“Treasury Department”) and the IRS published final regulations (TD 9885) under sections 59A, 383, 1502, 6038A, and 6655 (the “2019 final regulations”) in the **Federal Register** (84 FR 66968). On December 6, 2019, the Treasury Department and the IRS also published proposed regulations (REG-112607-19) under section 59A and proposed amendments to 26 CFR part 1 under section 6031 of the Code (the “proposed regulations”) in the **Federal Register** (84 FR 67046). On February 19, 2020, the Treasury Department and the IRS published a correction to the 2019 final regulations in the **Federal Register** (85 FR 9369).

No public hearing was requested or held. The Treasury Department and the IRS received written comments with respect to the proposed regulations. All

written comments received in response to the proposed regulations are available at www.regulations.gov or upon request.

Summary of Comments and Explanation of Revisions**I. Overview**

The final regulations retain the basic approach and structure of the proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions discusses those revisions as well as comments received in response to the solicitation of comments in the proposed regulations. Comments outside the scope of this rulemaking generally are not addressed but may be considered in connection with future guidance projects.

The final regulations provide guidance under sections 59A, 1502, and 6031 regarding certain aspects of the BEAT. Part II of this Summary of Comments and Explanation of Revisions describes rules relating to the determination of a taxpayer’s aggregate group for purposes of determining gross receipts and the base erosion percentage. Part III of this Summary of Comments and Explanation of Revisions describes rules relating to an election to waive deductions for purposes of the BEAT. Part IV of this Summary of Comments and Explanation of Revisions describes rules relating to the application of the BEAT to partnerships. Part V of this Summary of Comments and Explanation of Revisions describes rules relating to the anti-abuse rule provided in § 1.59A-9(b)(4) with respect to certain basis step-up transactions. Part VI of this Summary of Comments and Explanation of Revisions describes possible future guidance relating to the qualified derivative payment (“QDP”) reporting requirements in § 1.59A-6 and § 1.6038A-2(b)(7)(ix).

II. Determination of a Taxpayer’s Aggregate Group

The BEAT applies only to a taxpayer that is an applicable taxpayer. Section 59A(a). Generally, a taxpayer determines whether it is an applicable taxpayer based upon its gross receipts and base erosion percentage. § 1.59A-2(b). When a taxpayer is a member of an aggregate group, the gross receipts test and base erosion percentage test are applied on the basis of its aggregate group. § 1.59A-2(c)(1). Generally, a taxpayer and its affiliated corporations are aggregated for purposes of determining gross receipts and the base erosion percentage if they are members of the same controlled group of corporations, as defined in section 1563(a) with certain modifications

(including by substituting “more than 50 percent” for “at least 80 percent”). See § 1.59A-1(b)(1).

The proposed regulations provided additional guidance regarding how a taxpayer determines its aggregate group, including rules relating to short taxable years, members joining and leaving a taxpayer’s aggregate group, and predecessors. The preamble to the proposed regulations requested comments on how the aggregate group rules should apply in various situations. REG-112607-19, 84 FR 67046, 67047-48 (December 6, 2019). Part II.A of this Summary of Comments and Explanation of Revisions addresses the calculation of gross receipts and the base erosion percentage when either the taxpayer or a member of the taxpayer’s aggregate group has a short taxable year. Part II.B of this Summary of Comments and Explanation of Revisions addresses considerations relating to when a member joins or leaves an aggregate group. Part II.C of this Summary of Comments and Explanation of Revisions addresses the application of the aggregate group rules to predecessors and successors.

A. Rules Relating to the Determination of Gross Receipts and the Base Erosion Percentage for a Short Taxable Year

Section 1.59A-2(c)(3) provides that a taxpayer that is a member of an aggregate group measures the gross receipts and base erosion percentage of its aggregate group for a taxable year by reference to the taxpayer’s gross receipts, base erosion tax benefits, and deductions for the taxable year, and the gross receipts, base erosion tax benefits, and deductions of each member of the aggregate group for the taxable year of the member that ends with or within the taxpayer’s taxable year (the “with-or-within method”). Proposed § 1.59A-2(c)(5) required a taxpayer with a taxable year of fewer than 12 months (a short taxable year) to annualize its own gross receipts by multiplying the gross receipts for the short taxable year by 365 and dividing the result by the number of days in the short taxable year.

Proposed § 1.59A-2(c)(5) also provided that a taxpayer with a short taxable year must use a reasonable approach to determine the gross receipts and base erosion percentage of its aggregate group members for the short taxable year. The proposed regulations indicated that, in determining whether the taxpayer’s aggregate group satisfies the gross receipts test and base erosion percentage test for the taxpayer’s short taxable year, a reasonable approach would neither over-count nor under-count the gross receipts, base erosion

tax benefits, and deductions of the members of the taxpayer's aggregate group, even if the taxable year of a member or members of the aggregate group does not end with or within the short period. Proposed § 1.59A-2(c)(5). The preamble to the proposed regulations requested comments on whether more specific guidance was needed, and if so, how the gross receipts and base erosion percentage of an aggregate group should be determined when the applicable taxpayer has a short taxable year. REG-112607-19, 84 FR 67046, 67047 (December 6, 2019).

A comment supported the rule in the proposed regulations allowing a taxpayer to use a reasonable approach to determine the gross receipts and base erosion percentage of its aggregate group for a short taxable year and viewed more detailed guidance regarding short taxable years to be unnecessary. The comment stated that the operation of the with-or-within method, in conjunction with a reasonable approach to taking into account gross receipts, base erosion tax benefits, and deductions of aggregate group members, would prevent either the over-counting or under-counting of items in situations involving short taxable years. However, this comment also suggested that a reasonable approach would exclude the gross receipts, base erosion tax benefits, and deductions of an aggregate group member if the member's taxable year did not end with or within a short taxable year of the taxpayer. The Treasury Department and the IRS agree that a reasonable approach should prevent over-counting and under-counting. Therefore, the final regulations retain the rule in the proposed regulations that permits the use of a reasonable approach to determine whether a taxpayer's aggregate group meets the gross receipts test and base erosion percentage test with respect to a short taxable year of the taxpayer.

However, the Treasury Department and the IRS are concerned that when a member does not have a taxable year that ends with or within a short taxable year of a taxpayer, some taxpayers may take the view (as suggested in the comment described in the preceding paragraph) that excluding the gross receipts, base erosion tax benefits, and deductions of the member from the taxpayer's aggregate group is a reasonable approach. The Treasury Department and the IRS do not view such exclusions as a reasonable approach. Accordingly, the final regulations clarify that such a method constitutes an unreasonable approach. § 1.59A-2(c)(5)(i)(B). In addition, to

provide guidance for taxpayers in determining whether a particular approach is reasonable and does not over-count nor under-count, the final regulations include examples of methods that may or may not constitute a reasonable approach. *See id.*

B. Members Leaving and Joining an Aggregate Group

1. Close of Taxable Year Rule for Determining Gross Receipts and Base Erosion Percentage

a. When the Deemed Closing of a Taxable Year Occurs

The proposed regulations provided guidance clarifying how the gross receipts and the base erosion percentage of an aggregate group are determined when members join or leave a taxpayer's aggregate group, such as through a sale of the stock of a member to a third party. Proposed § 1.59A-2(c)(4) provided that, in determining the gross receipts and the base erosion percentage of a taxpayer's aggregate group, only items of members that occur during the period that they were members of the taxpayer's aggregate group are taken into account. Under this rule, items of a member that occur before the member joins the aggregate group of the taxpayer or after the member leaves the aggregate group of the taxpayer are not taken into account in determining the gross receipts or base erosion percentage of the taxpayer's aggregate group.

To implement this cut-off rule and determine which items occurred while a corporation was a member of a particular aggregate group, proposed § 1.59A-2(c)(4) treated a corporation that joins or leaves an aggregate group (in a transaction that does not otherwise result in a taxable year-end) as having a deemed taxable year-end. Specifically, proposed § 1.59A-2(c)(4) provided that this deemed taxable year-end occurs immediately before the corporation joins or leaves the aggregate group ("time-of-transaction rule"). The proposed regulations permitted a taxpayer to determine items attributable to this deemed short taxable year by either deeming a close of the corporation's books or, in the case of items other than extraordinary items (as defined in § 1.1502-76(b)(2)(ii)(C)), making a pro-rata allocation without a closing of the books.

Comments requested that the deemed taxable year-end occur at the end of the day, rather than immediately before the time of the transaction, to better align with other provisions of the Code and regulations. Comments noted that an end-of-day rule would be more consistent with provisions of the Code

and regulations such as section 381 and § 1.1502-76(b). *See* section 381 (providing that an acquiring corporation succeeds to and takes into account certain attributes as of the close of the day, rather than the time of the acquisition transaction); § 1.1502-76(b) (providing that, when a member joins or leaves a consolidated group, it has a taxable year-end at the end of the day).

The final regulations adopt this recommendation. Specifically, when a corporation has a deemed taxable year-end under § 1.59A-2(c)(4), the deemed taxable year-end is treated as occurring at the end of the day of the transaction. § 1.59A-2(c)(4)(ii). Thus, a new taxable year is deemed to begin at the beginning of the day after the transaction. A taxpayer determines items attributable to the deemed short taxable years ending upon and beginning the day after the deemed taxable year-end by either deeming a close of the corporation's books or, in the case of items other than extraordinary items, making a pro-rata allocation without a closing of the books. § 1.59A-2(c)(4)(iii). Extraordinary items that occur on the day of, but after, the transaction that causes the corporation to join or leave the aggregate group are treated as occurring in the deemed taxable year beginning the next day. For this purpose, the term "extraordinary items" has the meaning provided in § 1.1502-76(b)(2)(ii)(C). This term is also expanded to include any other payment that is not made in the ordinary course of business and that would be treated as a base erosion payment.

b. Alternative to Deemed Year-End Approach

One comment supported the approach in the proposed regulations to the deemed year-end rule, which it noted allows taxpayers flexibility to choose between the pro-rata allocation or closing of the books methods. However, the comment also expressed support for a simplified "no-cut-off" alternative to the deemed year-end framework in the proposed regulations, which could reduce the need for sharing information between a selling aggregate group and a purchaser.

Under the comment's simplified "no-cut-off" alternative, there would be no deemed year-end upon a corporation's entry to or exit from an aggregate group; rather, the corporation's full year would be taken into account by the acquirer's aggregate group. The comment acknowledged that this simplified approach would result in the "departed" aggregate group including no items for the year and the "acquiring" aggregate group taking into

account all of the corporation's items for the year, which may be distortionary. The comment also suggested that it may be appropriate to backstop this simplified "no-cut-off" rule with an anti-abuse rule that requires a deemed year-end if the transaction is arranged with a principal purpose of enabling a taxpayer to fall below the gross receipts or base erosion percentage thresholds.

The final regulations do not adopt the simplified "no-cut-off" alternative. Although that alternative may simplify some elements of compliance with the aggregate group rules, the Treasury Department and the IRS have determined that a rule that determines the gross receipts and base erosion tax benefits of an aggregate group should include only the gross receipts, base erosion tax benefits, and deductions of entities attributable to the period in which they were members of the aggregate group. The "no-cut-off" alternative proposed is inherently less precise and has the potential for abuse. For example, in the case of an acquisition near the end of a taxable year, the "no-cut-off" alternative could shift nearly a full year's items from the seller's aggregate group to the acquirer's aggregate group.

In addition, the Treasury Department and the IRS have determined that the additional subjectivity that would result from coupling the rule with an anti-abuse backstop to address the potential for abuse identified in the comment would lead to less certainty with respect to a key threshold in determining whether a taxpayer is subject to the BEAT.

2. Aggregate Group Members With Different Taxable Years Leading to Over-and-Under-Counting of Gross Receipts

A comment expressed concern that the deemed close of the taxable year that occurs when a member joins or leaves an aggregate group would create the potential for over-counting of gross receipts, base erosion tax benefits, and deductions of a member when applied in conjunction with the with-or-within method. This situation can arise when the taxpayer and a member of the aggregate group have different taxable years.

The comment illustrated this concern with the following example. A taxpayer has a calendar taxable year and its aggregate group includes DC, a domestic corporation with a June 30 year-end. On November 30, 2020, DC leaves the taxpayer's aggregate group. The comment explained that, under the with-or-within rule of § 1.59A-2(c)(3), the taxpayer is required to not only take

into account DC's gross receipts for the full taxable year ended June 30, 2020, (a full 12-month taxable year) but also a second short taxable year of July 1, 2020, through November 30, 2020 (a 5-month short taxable year). This result occurs because, from the perspective of the taxpayer, both DC's full 12-month taxable year and DC's 5-month short taxable year end "with or within" the taxpayer's calendar taxable year ending on December 31, 2020. As a result, the taxpayer would include 17 months of gross receipts from DC in taxpayer's taxable year ending December 31, 2020.

The comment recommended that an annualization rule or another alternative apply to the gross receipts test so that a taxpayer is not required to take into account more than 12 months of gross receipts of an aggregate group member when a member joins or leaves an aggregate group.

The comment also suggested that an annualization rule may be appropriate for the base erosion percentage test because an annualization rule would avoid over-weighting base erosion tax benefits and deductions. Depending on the taxpayer's particular facts, the comment noted that this suggested rule could cause a taxpayer's aggregate group to satisfy the base erosion percentage test or to fall below the relevant threshold established for that test.

The final regulations adopt this comment. Section 1.59A-2(c)(5)(ii)(A) provides that, if a member of a taxpayer's aggregate group has more than one taxable year that ends with or within the taxpayer's taxable year and together those taxable years are comprised of more than 12 months, then the member's gross receipts, base erosion tax benefits, and deductions for those years are annualized to 12 months for purposes of determining the gross receipts and base erosion percentage of the taxpayer's aggregate group. To annualize, the amount is multiplied by 365 and the result is divided by the total number of days in the year or years.

The final regulations also adopt a corresponding rule to address short taxable years of members. Specifically, if a member of the taxpayer's aggregate group changes its taxable year-end, and as a result the member's taxable year (or years) ending with or within the taxpayer's taxable year is comprised of fewer than 12 months, then for purposes of determining the gross receipts and base erosion percentage of the taxpayer's aggregate group, the member's gross receipts, base erosion tax benefits, and deductions for that year (or years) are annualized to 12 months. § 1.59A-2(c)(5)(ii)(B). This rule does not apply if the change in the

taxable year-end is a result of the application of § 1.1502-76(a), which provides that new members of a consolidated group adopt the common parent's taxable year. *But see* § 1.59A-2(c)(5)(iii) (providing an anti-abuse rule that applies to transactions with a principal purpose of changing the period taken into account for the gross receipts test or the base erosion percentage test).

For example, assume that an aggregate group member and the taxpayer both have calendar-year taxable years; then, in January of 2021, the aggregate group member changes its taxable year-end to January 31. Under these facts, the taxpayer's 2021 calendar year would only include the gross receipts, base erosion tax benefits, and deductions of the one-month short year of the aggregate group member because that is the only taxable year of the member that ends with or within the taxpayer's calendar year taxable year. Gross receipts would be undercounted, and the member's contribution to the aggregate group's base erosion percentage would be given insufficient weight in the taxpayer's 2021 calendar year. This difference would not resolve itself in subsequent years because, in the taxpayer's 2022 taxable year and each taxable year thereafter, the taxpayer will take into account only a 12-month period with respect to the aggregate group member—the taxable year from February 1 through January 31. Thus, absent this rule, the equivalent of 11 months of the member's contributions to the gross receipts and base erosion percentage would not be taken into account by the aggregate group because the taxpayer's 2021 calendar year computation would only include one month of aggregate group member activity. Accordingly, the final regulations provide that the member's gross receipts, base erosion tax benefits, and deductions for its one-month short-year ending January 31, 2021, are extrapolated and annualized to a full 12-month period solely for purposes of determining the gross receipts and base erosion percentage of the taxpayer's aggregate group when resulting from a change in taxable year. § 1.59A-2(c)(5)(ii)(B).

The final regulations also adopt a corresponding anti-abuse rule to address other types of transactions that may achieve a similar result of excluding gross receipts or base erosion percentage items of a taxpayer or a member of the taxpayer's aggregate group that are undertaken with a principal purpose of avoiding applicable taxpayer status. *See* § 1.59A-2(c)(5)(iii). Assuming a requisite principal purpose, an example

that could implicate this rule includes a transaction in which a taxpayer that is close to satisfying the gross receipts test transfers a portion of its revenue-generating assets to a newly formed domestic corporation that is a member of the taxpayer's aggregate group (but not a member of the taxpayer's consolidated group) and that has a different taxable year that does not end with or within the taxpayer's current taxable year. Another example, also assuming a requisite principal purpose, includes a transaction in which the stock of a member of the taxpayer's aggregate group is transferred to a consolidated group that is also a member of the taxpayer's aggregate group and that has a different taxable year that does not end with or within the taxpayer's current taxable year.

3. Deferred Deductions

A comment requested that § 1.59A-2(c)(4) be revised to clarify the treatment of items that are paid or accrued in a period before a corporation joins a taxpayer's aggregate group. As an example, the comment described a corporation's payment of interest to a foreign related party that gives rise to a base erosion payment in the taxable year of the payment, but that is not a base erosion tax benefit because the item is not currently deductible due to the limitations on deducting business interest expense in section 163(j). The comment suggested that, if the corporation subsequently becomes a member of an aggregate group of a different taxpayer (for example, because the corporation is sold to an unrelated buyer, and thereafter becomes a member of the buyer's aggregate group), the buyer's aggregate group should not have to take into account the base erosion tax benefit in the buyer's base erosion percentage when the business interest expense becomes deductible under section 163(j).

The final regulations do not adopt this comment. Under the statutory framework of the BEAT, whether a deduction is a base erosion tax benefit is determined solely with respect to whether the amount was a base erosion payment when it was paid or accrued. Section 59A(c)(2) and § 1.59A-3(c)(1) do not retest the base erosion payment to determine whether the payee continues to be a foreign related party of the taxpayer when the taxpayer claims the deduction.

C. Predecessors and Successors

Proposed § 1.59A-2(c)(6)(i) provided that, in determining gross receipts, any reference to a taxpayer includes a reference to any predecessor of the

taxpayer, including the distributor or transferor corporation in a transaction described in section 381(a) in which the taxpayer is the acquiring corporation. To prevent over-counting, the proposed regulations provided that, if the taxpayer or any member of its aggregate group is also a predecessor of the taxpayer or any member of its aggregate group, the gross receipts, base erosion tax benefits, and deductions of each member are taken into account only once. Proposed § 1.59A-2(c)(6)(ii).

A comment recommended taking into account gross receipts of foreign predecessor corporations only to the extent the gross receipts are taken into account in determining income that is effectively connected with the conduct of a U.S. trade or business ("ECI") of the foreign predecessor corporation, which would be consistent with the ECI rule for gross receipts of foreign corporations in § 1.59A-2(d). The final regulations adopt this comment. Section 1.59A-2(c)(6)(i) clarifies that the operating rules set forth in § 1.59A-2(c) (aggregation rules) and § 1.59A-2(d) (gross receipts test) apply to the same extent in the context of the predecessor rule. Thus, the ECI limitation on gross receipts in § 1.59A-2(d)(3) continues to apply to the successor.

III. Election To Waive Allowable Deductions

For purposes of determining a taxpayer's base erosion tax benefits and the base erosion percentage, the proposed regulations provided that all deductions that could be properly claimed by a taxpayer are treated as allowed deductions. Proposed § 1.59A-3(c)(5). However, if a taxpayer elected to forego a deduction and followed specified procedures (the "BEAT waiver election"), the proposed regulations provided that the foregone deduction would not be treated as a base erosion tax benefit. Proposed § 1.59A-3(c)(6). Generally, under the proposed regulations, any deduction waived pursuant to the BEAT waiver election is waived for all U.S. federal income tax purposes. Proposed § 1.59A-3(c)(6)(ii)(A). The proposed regulations permitted a taxpayer to make the BEAT waiver election on its original filed Federal income tax return, on an amended return, or during the course of an examination of the taxpayer's income tax return for the relevant taxable year pursuant to procedures prescribed by the Commissioner. Proposed § 1.59A-3(c)(6)(iii).

Part III.A of this Summary of Comments and Explanation of Revisions addresses when a taxpayer is eligible to make the BEAT waiver election. Part

III.B of this Summary of Comments and Explanation of Revisions addresses whether deductions waived pursuant to the BEAT waiver election should be included in the denominator of the base erosion percentage. Part III.C of this Summary of Comments and Explanation of Revisions addresses comments on the decrease of deductions waived. Part III.D of this Summary of Comments and Explanation of Revisions addresses comments on the inclusion of reinsurance premiums paid in the BEAT waiver election. Part III.E of this Summary of Comments and Explanation of Revisions addresses comments relating to revoking certain elections and making late elections to allow taxpayers to take into account the BEAT waiver election. Part III.F of this Summary of Comments and Explanation of Revisions addresses comments relating to procedural aspects of the BEAT waiver election. Part III.G of this Summary of Comments and Explanation of Revisions addresses comments relating to the application of the BEAT waiver election to partnerships. Part III.H of this Summary of Comments and Explanation of Revisions addresses the application of the BEAT waiver election to consolidated groups. Part III.I of this Summary of Comments and Explanation of Revisions addresses the interaction of the BEAT waiver election with other regulations.

A. Eligibility for the BEAT Waiver Election

Proposed § 1.59A-3(c)(5) provided that the BEAT waiver election is the sole method by which a deduction that could be properly claimed by taxpayer for the taxable year is not taken into account for BEAT purposes (the "primacy rule"). Proposed § 1.59A-3(c)(6)(i) provided that, "[s]olely for purposes of paragraph (c)(1) of this section" (the definition of a base erosion tax benefit), the amount of allowed deductions is reduced by the amount of deductions that are properly waived. A comment suggested that the phrase "solely for purposes of" in proposed § 1.59A-3(c)(6)(i) is unclear. The comment interpreted the proposed regulations as providing that a taxpayer can make the BEAT waiver election only if the waiver of a deduction, when taken together with any waivers by other members of the taxpayer's aggregate group, would lower the taxpayer's base erosion percentage below the base erosion percentage threshold applicable to the taxpayer. The comment also recommended that the Treasury Department and the IRS clarify that the primacy rule and the BEAT waiver election do not affect a

taxpayer's ability to not claim allowable deductions for tax purposes other than section 59A.

The final regulations explicitly clarify that, in order to make or increase the BEAT waiver election under § 1.59A-3(c)(6), the taxpayer must determine that the taxpayer could be an applicable taxpayer for BEAT purposes but for the BEAT waiver election. § 1.59A-3(c)(6)(i). Thus, for example, a controlled foreign corporation that does not have income that is effectively connected with the conduct of a trade or business in the United States cannot make a BEAT waiver election because the controlled foreign corporation cannot be an applicable taxpayer.

In addition, when a taxpayer does not make a BEAT waiver election (or when this waiver is not permitted), § 1.59A-3(c)(5) and § 1.59A-3(c)(6)(i) have no bearing on whether or how a taxpayer's failure to claim an allowable deduction, or to otherwise "waive" a deduction, is respected or taken into account for tax purposes other than section 59A. See generally § 1.59A-3(c)(5). In other words, the BEAT waiver election should not affect any existing law addressing "waiver" outside of the specific situation covered by the BEAT waiver (electing not to claim a deduction in order to avoid applicable taxpayer status).

B. Effect of the BEAT Waiver Election on the Base Erosion Percentage

Proposed § 1.59A-2(e)(3)(ii)(G) provided that any deduction not allowed in determining taxable income for the taxable year is not taken into account when determining the denominator of the base erosion percentage. See also proposed § 1.59A-3(c)(6)(ii)(A)(1) (generally providing that a waived deduction is treated as having been waived for all purposes of the Code and regulations). A comment asserted that a waived deduction should nonetheless be included in the denominator of the base erosion percentage.

The final regulations do not adopt this comment. This recommendation is inconsistent with § 1.59A-2(e)(3)(ii)(G), which provides that the denominator of the base erosion percentage does not include any deduction that is not allowed in determining taxable income for the taxable year.¹ A waived

deduction is not allowed in determining taxable income for the year. See § 1.59A-3(c)(6)(i). By providing that the denominator to the base erosion percentage includes only items allowed in determining taxable income for the taxable year, the denominator operates symmetrically with the numerator because the numerator—base erosion tax benefits—includes only those deductions and other items "allowed by [Chapter 1 of the Code]." See section 59A(c)(2)(A)(i).

C. Reduction of Waived Deductions During Audit or on an Amended Return

The proposed regulations provided that a taxpayer may make or increase a BEAT waiver election on an amended Federal income tax return or during the course of an examination of the taxpayer's income tax return. See proposed § 1.59A-3(c)(6)(iii). However, a taxpayer could not decrease the amount of deductions waived under the BEAT waiver election or revoke that election on any amended Federal income tax return or during an examination. See proposed § 1.59A-3(c)(6)(iii).

Comments requested that the final regulations permit taxpayers to decrease the amount of deductions that are waived either by filing an amended Federal income tax return or during an examination. Some comments suggested that no policy concerns existed that should prevent taxpayers from being able to reduce the amount of a previously waived deduction. Comments also noted that, given that the proposed regulations permit taxpayers to increase waived amounts on an amended return or during an audit, permitting taxpayers to reduce any waived amounts would not create any additional administrative burden for the IRS.

The final regulations do not adopt this comment. The BEAT waiver election was proposed, in part, in response to comments to prior proposed regulations recommending that the Treasury Department and the IRS clarify whether a deduction that is not claimed is not taken into account for BEAT purposes. The proposed regulations also included the waiver election, in part, to address taxpayer concerns that, due to the cliff effect of applicable taxpayer status, a marginal amount of base erosion tax benefits could have a greater effect on overall tax liability. The ability to

decrease waived amounts does not further the policy goal of addressing the cliff effect of applicable taxpayer status. The proposed regulations provided taxpayers significant flexibility through the BEAT waiver election, which permits taxpayers to choose deductions to waive based on tax optimization and to elect to increase waived deductions at various points after filing their original return, including during an examination. See proposed § 1.59A-3(c)(6)(iii). The Treasury Department and the IRS are concerned that expanding taxpayer electivity to permit the reduction of waived amounts will increase uncertainty to the IRS as it assesses tax return positions. The Treasury Department and the IRS are concerned that this uncertainty about taxpayers' return positions will negatively affect the ability of the IRS to efficiently conduct and close examinations.

D. Waiver of Life and Non-Life Reinsurance Premiums

The BEAT waiver election in the proposed regulations specifically referenced deductions. Proposed § 1.59A-3(c)(6). Comments noted that the term "base erosion tax benefits" includes certain reductions to gross income related to reinsurance that may be treated as reductions to gross receipts, not deductions. See § 1.59A-3(b)(1)(iii) (defining a base erosion payment to include "[a]ny premium or other consideration paid or accrued by the taxpayer to a foreign related party of the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A)"; § 1.59A-3(c)(1)(iii) (defining a base erosion tax benefit with respect to a base erosion payment described in § 1.59A-3(b)(1)(iii) as "any reduction under section 803(a)(1)(B) in the gross amount of premiums and other consideration on insurance and annuity contracts for premiums and other consideration arising out of indemnity reinsurance, or any deduction under section 832(b)(4)(A) from the amount of gross premiums written on insurance contracts during the taxable year for premiums paid for reinsurance."). Because premiums that are reductions to gross income do not technically fit within the terminology used in the waiver provisions, comments requested that final regulations permit a waiver for those items.

The Treasury Department and the IRS have determined that the policy rationale for providing the BEAT waiver election applies to insurance-related base erosion payments, and therefore the BEAT waiver election should be

¹ See REG-104259-18, 83 FR 65958 (December 21, 2018) (The preamble to the 2018 proposed regulations provided "[t]he numerator of the base erosion percentage only takes into account base erosion tax benefits, which generally are base erosion payments for which a deduction is allowed under the Code for a taxable year. . . . Similarly, the proposed regulations ensure that the

denominator of the base erosion percentage only takes into account deductions allowed under the Code by providing that the denominator of the base erosion percentage does not include deductions that are not allowed in determining taxable income for the taxable year.").

available with respect to base erosion tax benefits described in § 1.59A–3(b)(1)(iii). The final regulations include a provision for the waiver of amounts treated as reductions to gross premiums and other consideration that would otherwise be base erosion tax benefits within the definition of section 59A(c)(2)(A)(iii) and provide that similar operational and procedural rules apply to this waiver, such as the rule providing that the waiver applies for all purposes of the Code and regulations. See § 1.59A–3(c)(5). The BEAT waiver election affects the base erosion tax benefits of the taxpayer, not the amount of premium that the taxpayer pays to a foreign insurer or reinsurer (or the amount received by that foreign insurer or reinsurer); therefore, for example, the waiver of reduction to gross premiums and other consideration (or of premium payments that are deductions for federal income tax purposes) does not reduce the amount of any insurance premium payments that are subject to insurance excise tax under section 4371.

E. Revoking Elections and Retroactive Elections in Connection With Bonus Depreciation and Research and Experimentation Capitalization and Amortization

Comments asserted that certain taxpayers filed elections in connection with their 2018 tax returns to either (i) elect under section 59(e)(4) to capitalize and amortize over a 10-year period certain research and experimentation (“R&E”) expenditures that would otherwise be deductible in the year incurred, or (ii) elect not to claim an additional allowance for depreciation under section 168(k) (“bonus depreciation”) before the issuance of the proposed regulations that provided taxpayers with the option of the BEAT waiver election. The section 59(e)(4) and bonus depreciation elections are revocable only with the consent of the Secretary. The comments implied that, if taxpayers had known about the BEAT waiver election when they filed their returns, the taxpayers would not have made the elections under section 59(e)(4) or section 168(k)(7) because the BEAT waiver election would have been a better tax planning technique. The comments recommended that the Treasury Department and the IRS provide automatic relief for taxpayers that seek to revoke their prior elections under section 59(e)(4) or section 168(k)(7) in light of the BEAT waiver election.

Another comment recommended that the Treasury Department and the IRS also permit taxpayers to make retroactive elections to capitalize and

amortize costs under section 59A(e)(4) or to not claim bonus depreciation under section 168(k) to provide relief from “permanent BEAT consequences.” The comment cited an example where the taxpayer is entitled to additional deductions or has less regular taxable income in a taxable year as a result of an audit; consequently, the taxpayer had an “unintended” tax liability under section 59A. The comment proposed that the Treasury Department and the IRS permit a taxpayer to retroactively elect to capitalize costs that were previously reported as deductible in the taxable year.

The final regulations do not adopt the recommendations to provide guidance permitting taxpayers to automatically revoke prior capitalization elections under sections 59(e)(4) and 168(k) or make late elections. In both cases, the recommendations would expressly permit taxpayers to use hindsight to change their elections to reduce or eliminate BEAT liability or regular income tax. The use of hindsight in elections involves tax policy considerations broader than the interaction of the BEAT and the elections under section 59(e)(4) and section 168(k). Because these recommendations involve tax policy considerations that are not just limited to the application of the BEAT, the decision to permit revoking or making a late election is beyond the scope of the final regulations.

F. Procedures for Making the BEAT Waiver Election

1. Documentation Requirements

Proposed § 1.59A–3(c)(6)(i) required taxpayers to report certain information to make the BEAT waiver election. Under the proposed regulations, a taxpayer was required to provide, among other information, a detailed description of the item or property to which the deduction relates, including sufficient information to identify that item or property on the taxpayer’s books and records. Proposed § 1.59A–3(c)(6)(i)(A).

A comment suggested that the final regulations eliminate the information required by § 1.59A–3(c)(6)(i)(A) through (C) (the detailed description, the date or period of the payment or accrual; and the citation for the deduction). The comment stated that the final regulations should eliminate § 1.59A–3(c)(6)(i)(A) because a streamlined disclosure that included only the amount deducted (proposed § 1.59A–3(c)(6)(i)(D)), amount waived (proposed § 1.59A–3(c)(6)(i)(E)), tax return line item (proposed § 1.59A–

3(c)(6)(i)(F)), and foreign recipient (proposed § 1.59A–3(c)(6)(i)(G)) would provide sufficient information for the IRS to determine the validity of the election without creating an undue burden on taxpayers. While the comment characterized the information reporting requirements as “onerous,” it did not explicitly describe how or why this requirement is onerous.

The final regulations retain the requirements of proposed § 1.59A–3(c)(6)(i)(A) through (C). See § 1.59A–3(c)(6)(ii)(B)(1) through (3). In administering the BEAT waiver election, the IRS has an interest in obtaining information regarding the deductions being waived and the item or property to which the deduction relates, including sufficient information to identify the item on the taxpayer’s books and records and to have information about the Code section under which the deduction arises. However, the Treasury Department and the IRS acknowledge that requiring a “detailed” description of the item or property to which the deduction relates is not necessary for this purpose, particularly given that § 1.59A–3(c)(6)(ii)(B)(1) requires sufficient information to identify the item or property on the taxpayer’s books. Accordingly, § 1.59A–3(c)(6)(ii)(B)(1) of the final regulations omits the requirement to provide a “detailed” description. Section 1.59A–3(c)(6)(ii)(B)(6) and (7) is also revised to make certain non-substantive, clarifying changes.

2. Partial Waivers

Proposed § 1.59A–3(c)(6)(ii)(B) provided that, if a taxpayer makes the election to waive a deduction, in whole or in part, the election is disregarded for certain purposes. A comment observed that the proposed regulations do not expressly provide that the BEAT waiver election permits a partial waiver of a deduction. The comment also suggested that procedural forms should be clear in this regard. The final regulations have been revised to state more explicitly that a deduction may be waived in part. See § 1.59A–3(c)(6)(i); see also §§ 1.59A–3(c)(6)(ii)(B)(4) and (5), and 1.59A–3(c)(6)(iii)(B). Additionally, the IRS plans to revise Form 8991, *Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts*, to incorporate reporting requirements relating to the reporting of deductions that taxpayers have partially waived.

3. Procedures for BEAT Waiver During the Course of an Examination

Proposed § 1.59A–3(c)(6)(iii) generally provided that a taxpayer may make the

BEAT waiver election on its original filed Federal income tax return, on an amended return, or during the course of an examination pursuant to procedures prescribed by the Commissioner. The preamble to the proposed regulations indicated that, unless the Commissioner prescribes specific procedures with respect to waiving deductions during the course of an examination, the same procedures that generally apply to affirmative tax return changes during an examination would apply. REG-112607-19, 84 FR 67046, 67048 (December 06, 2019). The current procedures for submitting affirmative tax return changes during an examination, which are set forth in the Internal Revenue Manual (IRM), apply together with the provisions in section 6402 and the regulations thereunder (§§ 301.6402-1 through 301.6402-7).

A comment argued that the final regulations should expand upon the procedures of the IRM and permit a taxpayer to make the BEAT waiver election at any time during the course of an examination, including after all other adjustments have been agreed upon. Additionally, the comment recommended that the IRS consider providing a streamlined procedure for taxpayers to make the BEAT waiver election in connection with examinations that would not require the filing of an amended return because filing an amended return could be burdensome.

The final regulations do not adopt these recommendations because the IRM already provides a procedure that permits taxpayers to submit informal claims, including the BEAT waiver election, during the course of an examination. See IRM section 4.46.3.7. The Treasury Department and the IRS view this IRM procedure as serving an important tax administration function—preserving the IRS’s ability to conduct an audit efficiently and ensuring that the IRS has sufficient time to evaluate the merits of the claims. In addition, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to address procedures regarding claims in the Internal Revenue Manual rather than in the regulations. Further, the Code, regulations, and the IRM are clear that the taxpayer retains a statutory right to submit an amended return that can include a waiver election or increase the waived deductions.

G. Application of the BEAT Waiver Election to Partnerships

Comments recommended generally that the BEAT waiver election be expanded to expressly permit a waiver

in connection with deductions that are allocated from a partnership. Some comments recommended that the final regulations clarify that the BEAT waiver election is made by the partner, rather than by the partnership. These comments suggested certain corresponding changes necessary to coordinate the tax treatment of partners and partnerships. Specifically, a comment recommended that the waived deductions be treated as non-deductible expenditures under section 705(a)(2)(B)—thereby reducing the adjusted basis of a partner’s interest in a partnership—to prevent a corporate partner from subsequently benefitting from waived partnership deductions when disposing of its interest in the partnership.

The final regulations generally adopt these comments and, subject to certain special rules in connection with the centralized partnership audit regime enacted in the Bipartisan Budget Act of 2015 (the “BBA”), explicitly permit a corporate partner in a partnership to make a BEAT waiver election with respect to partnership items. § 1.59A-3(c)(6)(iv)(A). The final regulations also clarify that a partnership may not make a BEAT waiver election. § 1.59A-3(c)(6)(iv)(A). In addition, the final regulations provide that waived deductions are treated as non-deductible expenditures under section 705(a)(2)(B). See § 1.59A-3(c)(6)(iv)(B).

Further, the final regulations provide rules to conform the partner-level waiver with section 163(j). See § 1.59A-3(c)(6)(iv)(C). Specifically, the final regulations clarify that, when a partner waives a deduction that was taken into account by the partnership to reduce the partnership’s adjusted taxable income for purposes of determining the partnership-level section 163(j) limitation, the increase in the partner’s income resulting from the waiver is treated as a partner basis item (as defined in § 1.163(j)-6(b)(2)) for the partner, but not the partnership. Thus, the increase in the partner’s income resulting from the waiver is added to the partner’s section 163(j) limitation computation. § 1.59A-3(c)(6)(iv)(C). The partnership’s section 163(j) computations are not impacted by the partner’s waiver.

Another comment recommended that, if waiver of partnership deductions is permitted, the effect of the waiver should be reconciled with the centralized partnership audit regime enacted by the BBA in sections 6221 through 6241 (the “BBA audit procedures”). Under the BBA audit procedures, adjustments must be made at the partnership level. Generally, the

partnership is liable for an imputed underpayment computed on the adjustments unless the partnership elects to “push out” the adjustments to the partners from the year to which the adjustments relate (reviewed year partners). Sections 6221, 6225, 6226, and 6227.

The final regulations clarify that a partner may make the BEAT waiver election with respect to an increase in a deduction that is attributable to an adjustment made under the BBA audit procedures, but only if the partner is taking into account the partnership adjustments either because the partnership elects to have the partners take into account the adjustments under sections 6226 or 6227, or because the partner takes into account the adjustments as part of an amended return filed pursuant to section 6225(c)(2)(A). § 1.59A-3(c)(6)(iv)(D). If the partner makes the BEAT waiver election, the partner will compute its additional reporting year tax (as described in § 301.6226-3) or the amount due under § 301.6225-2(d)(2)(ii)(A), treating the waived amount as provided in § 1.59A-3(c)(6). The final regulations do not address the interaction of the BBA audit procedures and the BEAT more generally. As the BBA audit procedures continue to be implemented, the Treasury Department and the IRS will review the implementation and determine whether future BBA audit procedure guidance is required with respect to BEAT.

A comment observed that section 6222 generally requires a partner to treat a partnership item on its return consistently with the treatment of the item on the partnership return or otherwise to notify the IRS of this inconsistent treatment. This comment recommended that the final regulations coordinate and streamline the notification procedure under section 6222 and § 301.6222-1 with the information required under proposed § 1.59A-3(c)(6)(i)(A) through (G).

The final regulations do not reflect this comment because the reporting by a partner of the partnership item that is waived pursuant to the procedures set forth in § 1.59A-3(c)(6)(ii)(B) is consistent with the reporting of the item for purposes of section 6222. After the election is made, the partnership-related item is being reported properly at the partner level, after taking into account the partner’s facts and circumstances and application of the Code and regulations to that item (that is, the waiver). The fact that an item is waived pursuant to § 1.59A-3(c)(6) does not constitute inconsistent reporting for purposes of section 6222 but is merely

applying the Code and regulations to determine the taxability of that item. See § 301.6222–1(a) (requiring a partner to treat partnership-related items “consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items”); see generally § 1.59A–3(c)(6)(ii)(B) (requiring a taxpayer to report certain information in connection with waived items, including the amount waived and the amount claimed).

H. Application of the BEAT Waiver Election to Consolidated Groups

A comment recommended that the final regulations clarify that waived deductions attributable to a consolidated group member are treated as noncapital, nondeductible expenses that decrease the tax basis in the member’s stock for purposes of the stock basis rules in § 1.1502–32 to prevent the shareholder from subsequently benefitting from a waived deduction when disposing of the member’s stock. The final regulations adopt this clarifying comment. See § 1.59A–3(c)(6)(iii)(A)(4).

I. Interaction of Waived Deductions With Other Regulations

The proposed regulations included specific references to provisions of the Code and regulations that are not affected by the BEAT waiver election in proposed § 1.59A–3(c)(6)(iii)(B). The proposed regulations also provided that waived deductions are taken into account as necessary to prevent a taxpayer from receiving the benefit of a waived deduction. § 1.59A–3(c)(6)(iii)(B)(7). No comments addressed this aspect of the proposed regulations. The final regulations retain these rules, which may apply when other deductible expenses are taken into account for other specific purposes of the Code because the item was an expense (rather than because the item was deducted), such as the fact that waived deductions are still taken into account for purposes of determining the amount of the taxpayer’s earnings and profits under § 1.59A–3(c)(6)(iii)(B)(6).

IV. Application of the BEAT to Partnerships

The 2019 final regulations set forth operating rules for applying the BEAT to partnerships. In general, the final regulations provide that a partnership is treated as an aggregate of its partners and, accordingly, deem certain transactions to have occurred at the partner level for BEAT purposes even though they may be treated as having occurred at the partnership level for

other tax purposes. See generally § 1.59A–7.

A. Effectively Connected Income

Generally, the 2019 final regulations provide an exception (the “ECI exception”) whereby a base erosion payment does not result from amounts paid or accrued to a foreign related party that are subject to tax as ECI. § 1.59A–3(b)(3)(iii). To qualify for the ECI exception, the taxpayer must receive a withholding certificate on which the foreign related party claims an exemption from withholding under section 1441 or 1442 because the amounts are ECI. The 2019 final regulations do not set out specific rules for applying the ECI exception to transactions involving partnerships. The preamble to the proposed regulations stated that the Treasury Department and the IRS are considering additional guidance to address (i) the treatment of a contribution by a foreign person to a partnership engaged in a U.S. trade or business, (ii) transfers of partnership interests by a foreign person and (iii) transfers of property by the partnership with a foreign person as a partner to a related U.S. person. REG–112607–19, 84 FR 67046, 67049 (December 6, 2019).

A comment generally supported applying an ECI exception to partnership transactions where the taxpayer is treated as making a base erosion payment as a result of a deemed transaction with a foreign related party, and where the foreign related party is subject to U.S. federal income tax on allocations of income from the partnership. The Treasury Department and the IRS generally agree with this comment and have revised the final regulations in § 1.59A–3(b)(3)(iii)(C) to expand the ECI exception to apply to certain partnership transactions. The expanded ECI exception in § 1.59A–3(b)(3)(iii)(C) applies if the exception in § 1.59A–3(b)(3)(iii)(A) or (B) would have applied to the payment or accrual as characterized under § 1.59A–7(b) and (c) for purposes of section 59A (assuming any necessary withholding certificate were obtained).

Thus, for example, if a U.S. taxpayer purchases an interest in a partnership from a foreign related party, then under the general BEAT partnership rules for transfers of a partnership interest, this transaction is treated as a transfer by the foreign related party of a portion of the partnership assets to the U.S. taxpayer. See § 1.59A–7(c)(3). To the extent that these partnership assets are used or held for use in connection with the conduct of a trade or business within the United States, this situation is similar to a situation where the foreign related party

directly holds the assets that produce ECI (for example, in a U.S. branch). In that analogous situation, an acquisition of those assets by the U.S. taxpayer from the foreign related party would have been eligible for the ECI exception reflected in § 1.59A–3(b)(3)(iii).

The ECI exception reflected in § 1.59A–3(b)(3)(iii)(C) also may apply in other situations, such as when (i) a U.S. taxpayer contributes cash and a foreign related party of the U.S. taxpayer contributes depreciable property to the partnership (see § 1.59A–7(c)(3)(iii)), (ii) a partnership with a partner that is a foreign related party of the taxpayer partner engages in a transaction with the taxpayer (see § 1.59A–7(c)(1)), or (iii) a partnership engages in a transaction with a foreign related party of a partner in the partnership (*id.*).

The general ECI exception reflected in § 1.59A–3(b)(3)(iii)(A) would not apply if a U.S. person purchased depreciable or amortizable property from a foreign related party and that property was not held in connection with a U.S. trade or business. Similarly, when a U.S. person is treated as purchasing the same depreciable or amortizable property from a foreign related party under § 1.59A–7(c)(3)(iii) because the foreign related party contributes that property to a partnership, the ECI exception does not apply even though the property becomes a partnership asset after the transaction and the partnership uses the property in its U.S. trade or business.

To implement this addition, the final regulations include modified certification procedures similar to those set forth in § 1.59A–3(b)(3)(iii)(A) in order for the taxpayer to qualify for this exception. Specifically, the final regulations require a taxpayer to obtain a written statement from a foreign related party that is comparable to a withholding certification provided under § 1.59A–3(b)(3)(iii)(A), but which takes into account that the transaction is a deemed transaction under § 1.59A–7(b) or (c) rather than a transaction for which the foreign related party is required to report ECI. The taxpayer may rely on the written statement unless it has reason to know or actual knowledge that the statement is incorrect.

B. Treatment of Curative Allocations

The proposed regulations provided that if a partnership adopts the curative method of making section 704(c) allocations under § 1.704–3(c), the allocation of income to the contributing partner in lieu of a deduction allocation to the non-contributing partner is treated as a deduction for purposes of section 59A. Proposed § 1.59A–

7(c)(5)(v). A comment expressed support for the rule and recommended that the Treasury Department and the IRS also clarify that base erosion tax benefits include curative allocations of an item of deduction attributable to a base erosion payment. The Treasury Department and the IRS believe that the proposed regulations were already clear in this regard. Therefore, the final regulations retain § 1.59A-7(c)(5)(v) along with an example that illustrates when curative allocations are treated as base erosion tax benefits; the final regulations also clarify that curative allocations that arise under section 704(c) as a result of a revaluation are treated in a similar manner.

C. Partnership Anti-Abuse Rules—Derivatives Involving Partnerships

Section 1.59A-3(b)(3)(ii) provides an exception from base erosion payment status for qualified derivative payments. Section 1.59A-6(d)(1) defines a derivative for purposes of the QDP rules as a contract whose value is determined by reference to one or more of the following: (1) Any shares of stock in a corporation, (2) any evidence of indebtedness, (3) any actively traded commodity, (4) any currency, or (5) any rate, price, amount, index, formula, or algorithm. Proposed § 1.59A-9(b)(5) provides an anti-abuse rule relating to derivatives on partnership interests and partnership assets. Under this proposed rule, if a taxpayer acquires a derivative on a partnership interest or partnership assets with a principal purpose of eliminating or reducing a base erosion payment, then the taxpayer is treated as having a direct interest in the partnership interest or partnership asset (instead of a derivative interest) for purposes of applying section 59A.

A comment recommended that the regulations clarify the interaction of the anti-abuse rule relating to derivatives on partnership assets with the QDP exception that applies with respect to certain derivatives. The final regulations adopt this comment and provide that the partnership anti-abuse rule for derivatives does not apply when a payment with respect to a derivative on a partnership asset qualifies for the QDP exception. § 1.59A-9(b)(5).

D. Other Issues

Proposed § 1.6031(a)-1(b)(7) stated:

If a foreign partnership is not required to file a partnership return and the foreign partnership has made a payment or accrual that is treated as a base erosion payment of a partner as provided in § 1.59A-7(b)(2), a person required to file a Form 8991 (or successor) who is a partner in the partnership must provide the information necessary to

report any base erosion payments on Form 8991 (or successor) or the related instructions. This paragraph does not apply to any partner described in § 1.59A-7(b)(4).

The cross-references contained in this regulation, § 1.59A-7(b)(2) and § 1.59A-7(b)(4), do not exist. The final regulations clarify which partners are intended to be excluded from the application of proposed § 1.6031(a)-1(b)(7). *See* § 1.6031(a)-1(b)(7). Section 1.6031(a)-1(b)(7) is also revised to make certain clarifying changes.

Finally, § 1.59A-9(b)(6) is revised to make certain clarifying changes.

V. Anti-Abuse Rules of § 1.59A-9 for Basis Step-Up Transactions

Section 59A(d)(2) generally defines a base erosion payment to include an amount paid or accrued to a foreign related party in connection with the acquisition of depreciable or amortizable property. However, § 1.59A-3(b)(3)(viii) provides an exception to the definition of a base erosion payment for certain amounts transferred to or exchanged with a foreign related party in a transaction described in sections 332, 351, 355, and 368 (the “specified nonrecognition transaction exception”).

The specified nonrecognition transaction exception was adopted in the 2019 final regulations in response to comments to proposed regulations issued in 2018 that argued that the depreciable or amortizable assets acquired by a domestic corporation in a nonrecognition transaction should not be taken into account for purposes of the BEAT because nonrecognition transactions generally result in carryover tax basis to the acquiring corporation. TD 9885, 84 FR 66968, 66977. These comments also stated that if that recommendation were to be adopted, an anti-abuse rule also could be adopted to prevent taxpayers from undermining this policy rationale for the specified nonrecognition transaction exception by engaging in basis step-up transactions immediately before an inbound nonrecognition transaction. The 2019 final regulations generally adopted the approach recommended by comments, including adopting a specific targeted anti-abuse rule in § 1.59A-9(b)(4). That rule provides that if a transaction, plan, or arrangement has a principal purpose of increasing the adjusted basis of property that a taxpayer acquires in a specified nonrecognition transaction, the nonrecognition exception of § 1.59A-3(b)(3)(viii)(A) will not apply to the nonrecognition transaction. Additionally, § 1.59A-9(b)(4) contains an irrebuttable presumption that a

transaction, plan, or arrangement between related parties that increases the adjusted basis of property within the six-month period before the taxpayer acquires the property in a specified nonrecognition transaction has a principal purpose of increasing the adjusted basis of property that a taxpayer acquires in a nonrecognition transaction.

Taxpayers have expressed concern about the breadth of the anti-abuse rule. A comment stated that the anti-abuse rule can create a “cliff effect” whereby a minimal amount of pre-transaction basis step-up could disqualify an entire transaction that would have otherwise qualified for the specified nonrecognition transaction exception. The comment recommended that the anti-abuse rule exclude transactions with a relatively small amount of basis step-up or provide taxpayers with an election to forego the basis step-up.

Section 1.59A-9(b)(4) has been revised to adopt this comment. First, the anti-abuse rule now provides that when the rule applies, its effect is to turn off the application of the specified nonrecognition transaction exception only to the extent of the basis step-up amount. This revision addresses the comment’s concern regarding the cliff effect of the rule.

Second, § 1.59A-9(b)(4) has been revised to clarify that the transaction, plan, or arrangement with a principal purpose of increasing the adjusted basis of property must also have a connection to the acquisition of the property by the taxpayer in a specified nonrecognition transaction. This change is made because the Treasury Department and the IRS understand that some taxpayers interpreted the prior version of the rule to potentially apply to certain basis step-up transactions (for example, a qualified stock purchase for which an election is made under section 338(g)), even if that basis step-up transaction had no factual connection with a later specified nonrecognition transaction (for example, the section 338(g) transaction occurred many years before the BEAT was enacted, but the property still has a stepped-up basis that is being depreciated or amortized when the subsequent specified nonrecognition transaction occurs). Sections 1.59A-9(c)(11) (*Example 10*) and 1.59A-9(c)(12) (*Example 11*) have also been revised to reflect these changes.

VI. Possible Future Guidance Concerning the QDP Reporting Requirements

The preamble to the proposed regulations indicated that comments to the proposed regulations were required

to be received by February 4, 2020. REG-112607-19, 84 FR 67046 (December 6, 2019). A comment was submitted after this date that recommended that the Treasury Department address the interaction of the QDP exception, the BEAT netting rule in § 1.59A-2(e)(3)(iv) (with respect to positions for which a taxpayer applies a mark-to-market method of accounting for U.S. federal income tax purposes), and the QDP reporting requirements in § 1.59A-6 and § 1.6038A-2(b)(7)(ix)—each in the 2019 final regulations. The comment recommended that the asserted ambiguities be addressed in revised final regulations, a revenue procedure or another type of written authoritative guidance. The Treasury Department and the IRS are studying this submission and considering whether future guidance may be appropriate.

Applicability Date

These final regulations generally apply to taxable years beginning on or after *October 9, 2020*. The rules in §§ 1.59A-7(c)(5)(v) and (g)(2)(x), and 1.59A-9(b)(5) and (6) apply to taxable years ending on or after December 2, 2019.

Taxpayers may apply these final regulations in their entirety for taxable years beginning after December 31, 2017, and before their applicability date, provided that, once applied, taxpayers must continue to apply these regulations in their entirety for all subsequent taxable years. See section 7805(b)(7). Alternatively, taxpayers may apply only § 1.59A-3(c)(5) and (6) for taxable years beginning after December 31, 2017, and before their applicability date, provided that, once applied, taxpayers must continue to apply § 1.59A-3(c)(5) and (6) in their entirety for all subsequent taxable years. Taxpayers may also rely on §§ 1.59A-2(c)(2)(ii) and (c)(4) through (6), and 1.59A-3(c)(5) and (c)(6) of the proposed regulations in their entirety for taxable years beginning after December 31, 2017, and before October 9, 2020.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Executive Order 13771 designation for this regulation is regulatory.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these regulations as economically significant under section 1(c) of the MOA. Accordingly, the OMB has reviewed these regulations.

A. Background

The Tax Cuts and Jobs Act of 2017 (the “Act”) added new section 59A, which imposes a Base Erosion and Anti-Abuse Tax (“BEAT”) on certain deductions paid or accrued to foreign related parties. By taxing such payments, the BEAT “aims to level the playing field between U.S. and foreign-owned multinational corporations in an administrable way.” Senate Committee on Finance, Explanation of the Bill, S. Prt. 115-20, at 391 (November 22, 2017).

The tax is levied only on corporations with substantial gross receipts (a determination referred to as the “gross receipts test”) and for which the relevant deductions are three percent or higher (two percent or higher in the case of certain banks or registered securities dealers) of the corporation’s total deductions (with certain exceptions), a determination referred to as the “base erosion percentage test.” The applicable percentage in the base erosion percentage test is referred to in these Special Analyses as the base erosion threshold.

A taxpayer that satisfies both the gross receipts test and the base erosion percentage test is referred to as an applicable taxpayer. A taxpayer is not an applicable taxpayer, and thus does not have any BEAT liability, if its base erosion percentage is less than the base erosion threshold.

Additional features of the BEAT also enter its calculation. The BEAT operates as a minimum tax, so an applicable taxpayer is only subject to additional tax under the BEAT if the tax at the BEAT rate multiplied by the taxpayer’s modified taxable income exceeds the taxpayer’s regular tax liability, reduced by certain credits. Because of this latter provision, the BEAT formula has the effect of imposing the BEAT on the amount of those tax credits. In general,

tax credits are subject to the BEAT except the research credit under section 41 and a portion of low income housing credits, renewable electricity production credits under section 45, and certain investment tax credits under section 46. Notably, this means that the foreign tax credit is currently subject to the BEAT. In taxable years beginning after December 31, 2025, all tax credits are subject to the BEAT.

On December 6, 2019, the Treasury Department and the IRS published final regulations under sections 59A, 383, 1502, 6038A, and 6655 (the “2019 final regulations”) and also published proposed regulations (“proposed regulations”), which are being finalized here.

B. Need for the Final Regulations

Section 59A does not explicitly state whether an amount that is permitted as a deduction under the Code or regulations but that is not claimed as a deduction on a taxpayer’s tax return is potentially a base erosion tax benefit for purposes of the BEAT and the base erosion percentage test. Comments recommended that the Treasury Department and the IRS clarify the treatment of amounts that are allowable as a deduction but not claimed as a deduction on a taxpayer’s tax return. Regulations are needed to respond to these comments and to clarify the treatment of these amounts under section 59A, including with respect to partnership items and reinsurance payments. Regulations are also needed to clarify certain aspects of the rules set forth in the 2019 final regulations relating to how a taxpayer determines its aggregate group for purposes of determining gross receipts and the base erosion percentage, and how the BEAT applies to partnerships.

C. Overview

These final regulations (“these regulations” or “the regulations”) provide taxpayers an election to waive deductions that would otherwise be taken into account in determining whether the taxpayer is an applicable taxpayer subject to the BEAT. The regulations also permit waiver of some reinsurance items that are also subject to the BEAT. These provisions are analyzed in part D of these Special Analyses.

These regulations also include modifications to the rules set forth in the 2019 final regulations relating to how a taxpayer determines its aggregate group for purposes of determining gross receipts and the base erosion percentage, and how the BEAT applies to partnerships. The regulations further

address, in response to comments, technical issues that apply when a partner in a partnership elects to waive deductions, and when reinsurance items are waived—issues that were not addressed in the proposed regulations. These provisions are not expected to result in any meaningful changes in taxpayer behavior relative to the no-action baseline or alternative regulatory approaches and are not assessed in these Special Analyses.

The proposed regulations solicited comments on the economic effects of the election to waive deductions and more generally of the proposed regulations. No such comments were received.

D. Economic Analysis

1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of these final regulations compared to a no-action baseline that reflects anticipated Federal income tax-related behavior in the absence of these regulations.

2. Economic Effects of the Election To Waive Deductions

a. Background and Alternatives Considered

Section 59A does not explicitly state whether an amount that is permitted as a deduction under the Code or regulations but that is not claimed as a deduction on the taxpayer's tax return is potentially a base erosion tax benefit for the purposes of the base erosion percentage test. A taxpayer may find waiving certain deductions advantageous if the waived deductions lower the taxpayer's base erosion percentage below the base erosion threshold, thus making section 59A inapplicable to the taxpayer. Comments to prior proposed regulations recommended that the Treasury Department and the IRS clarify the treatment of allowable amounts that are not claimed as a deduction on the taxpayer's tax return for purposes of section 59A.

To address concerns about the treatment of these amounts permitted as deductions under law, the Treasury Department and the IRS considered two alternatives: (1) Provide that all deductions that could be properly claimed by a taxpayer for the taxable year are taken into account for purposes of the base erosion percentage test (and for other purposes of the BEAT) even if a deduction is not claimed on the taxpayer's tax return (the "alternative regulatory approach"); or (2) provide that an allowable deduction that a

taxpayer does not claim on its tax return is not taken into account in the base erosion percentage test or for other purposes of the BEAT, provided that certain procedural steps are followed. These regulations adopt the latter approach.

Under the alternative regulatory approach, base erosion payments allowable as deductions but not claimed by a taxpayer would nonetheless be taken into account in the base erosion percentage. Thus, a taxpayer could not avoid satisfying the base erosion percentage test by not claiming certain deductions. Under these regulations, base erosion payments allowable as deductions but waived by a taxpayer are not taken into account in the base erosion percentage test, assuming certain procedural steps are followed. The waived deductions are waived for all U.S. federal income tax purposes (with certain exceptions listed in the regulations) and thus, for example, the deductions are also not allowed for regular income tax purposes. If the taxpayer is not an applicable taxpayer because the taxpayer waives deductions so as not to satisfy the base erosion percentage test, the taxpayer may continue to claim deductions for base erosion payments that are not waived, provided these deductions would otherwise be allowed.

b. Example

Consider a U.S.-parented multinational enterprise that satisfies the gross receipts test and that is not a bank or registered securities dealer. The U.S. corporation has gross income from domestic sources of \$1,000x and also has a net global intangible low-taxed income ("GILTI") inclusion of \$500x.² The taxpayer has \$870x of deductions pertinent to this example that are not base erosion tax benefits and \$30x of deductions that are base erosion tax benefits. It is also assumed that the amount of foreign tax credits permitted under section 904(a) is \$105x. This taxpayer's regular U.S. taxable income is \$600x (\$1,000x + \$500x - \$870x - \$30x), its regular U.S. tax rate is 21.0 percent, and its regular U.S. tax liability is \$21x (\$600x × 21% = \$126x, less foreign tax credits of \$105x (\$126x - \$105x)).

Under the alternative regulatory approach, the taxpayer is an applicable

² For simplification of this example, the \$500x GILTI income is presented as the net of the global intangible low-tax income amount of the domestic corporation under section 951A, plus the section 78 gross up amount for foreign taxes, less the GILTI deduction under section 250(a)(1)(B). The deduction under section 250(a)(1)(B) is not taken into account in determining the base erosion percentage. See section 59A(c)(4)(B)(i).

taxpayer because its base erosion percentage is 3.33 percent (\$30x/\$900x), which is greater than the three percent base erosion threshold. Because the taxpayer is subject to the BEAT, it must further compute its modified taxable income, which is \$630x—its regular U.S. taxable income (\$600x) plus its base erosion tax benefits (\$30x). The taxpayer determines its base erosion minimum tax amount as the excess of the BEAT rate (10 percent) multiplied by its modified taxable income (\$630, thus yielding a base erosion minimum tax amount of \$63x = \$630x × 10%) over its regular U.S. tax liability of \$21x, which is equal to \$42x (\$63x - \$21x). In this example the total U.S. tax bill is \$63x (\$21x of regular tax and \$42x of BEAT).

Under these regulations, this taxpayer would have the option to waive all or part of its deductions that are base erosion payments; this is potentially advantageous to the taxpayer if it allows the taxpayer's base erosion percentage to fall below the base erosion threshold. Specifically, the taxpayer could waive \$3.10x of its deductions that are base erosion payments, yielding a base erosion percentage below the three percent base erosion threshold (base erosion tax benefits = \$26.90x (\$30x - \$3.10x); base erosion percentage = \$26.90x/(\$870x + \$26.90x) = 2.99%). After taking into account this waiver, the taxpayer's regular taxable income would increase to \$603.10x (\$1000x + \$500x - \$870x - \$26.90x), and its regular tax liability would increase to \$21.65x (\$603.10x × 21% = \$126.65, less foreign tax credits of \$105x = \$21.65x).³ The waiver is valuable to this taxpayer because its tax bill in this simple example is lower by \$41.35x (\$63x - \$21.65x).

This example shows the difference in tax liability caused by allowing deductions to be waived and thus, the difference in tax liability between these regulations and the alternative regulatory approach. Part D.2.c of these Special Analyses discusses the behavioral incentives and economic effects that can result from this tax treatment.

c. Economic Effects of the Election To Waive Deductions

These regulations effectively allow a taxpayer to make payments that would be base erosion payments without becoming an applicable taxpayer and

³ Although the waiver increases the taxpayer's regular taxable income, the taxpayer's gross income (in the context of this example) is unchanged. Thus, only the tax liability needs to be compared across the regulatory approaches to determine whether the taxpayer would benefit from waiving deductions.

thus subject to the BEAT. Thus, this provision reduces the effective tax on base erosion payments for some taxpayers, relative to the alternative regulatory approach. Because of this reduction, these regulations may lead to a higher amount of base erosion payments than under the alternative regulatory approach.

The Treasury Department projects, based on a standard economic model, that any such higher amount of base erosion payments under these regulations would come from those taxpayers who, under the alternative regulatory approach, would not be applicable taxpayers but would be close to being applicable taxpayers; that is, the taxpayers who would potentially change behavior would be those taxpayers who, under the alternative regulatory approach, would have a base erosion percentage that was close to but below the base erosion threshold. No additional base erosion payments are projected under this model to come from taxpayers that would be applicable taxpayers under the alternative regulatory approach.⁴

To see the logic behind this claim, consider an applicable taxpayer under the alternative regulatory approach with base erosion payments of \$Y. If this taxpayer were to increase its base erosion payments by \$10 and reduce its non-base erosion payments by \$10 (that is, it has substituted base erosion payments for non-base erosion payments), its tax bill would generally increase by \$1. The fact that this taxpayer chose base erosion payments of \$Y rather than \$Y + 10 suggests that this substitution would be worth less than \$1 to the taxpayer. The substitution is not worth the increased tax. Next consider this taxpayer under these regulations. If it elects to waive sufficient deductions such that it is not an applicable taxpayer, then the marginal increase in its tax bill from the hypothesized substitution is \$2.10. Thus, if this increase in base erosion payments (and substitution away from non-base erosion payments) is not worthwhile to the taxpayer under the alternative regulatory approach, it will not be worthwhile under these regulations. This example suggests that to the extent that there is any increase in base erosion payments under these regulations (and substitution away from non-base erosion payments), it generally will not come from taxpayers that

would be applicable taxpayers under the alternative regulatory approach.

The example further suggests that any change in behavior will instead generally come from those taxpayers that would not be applicable taxpayers under the alternative regulatory approach. These taxpayers would be able, under these regulations, to take on activities that increase their base erosion payments but, by waiving all or part of the deduction for these activities, avoid crossing the base erosion threshold. The Treasury Department projects that this is the set of taxpayers that will be the primary source of any economic effects arising from these regulations. To the extent that this model does not capture all possible taxpayer circumstances, the Treasury Department recognizes that there may be some additional base erosion payments that come from taxpayers that would be applicable taxpayers under the alternative regulatory approach.

As a result of the ability to waive deductions in these regulations, these taxpayers may change business behavior in two possible ways relative to the alternative regulatory approach. First, these businesses may expand economic activities in the United States even if those activities result in payments to foreign related parties (*i.e.*, base erosion payments). For example, under the alternative regulatory approach a multinational enterprise may decide not to open an office or manufacturing plant in the United States if that incremental activity also resulted in incremental base erosion payments that would cause the taxpayer to become an applicable taxpayer. Under these regulations, this business can expand its activities in the U.S. and avoid becoming an applicable taxpayer provided it waived sufficient deductions to stay below the base erosion threshold. These activities would be accompanied by an increase in base erosion payments.

Second, businesses already operating in the United States may structure a greater proportion of their transactions as base erosion payments under these regulations relative to the alternative regulatory approach. Under the alternative regulatory approach, a business might conduct its transactions through unrelated parties rather than with a foreign related party so that its base erosion percentage would remain below the base erosion threshold. Under these regulations, this business could instead use a foreign related party (thus, the transaction would generally be a base erosion payment) rather than an unrelated party for these transactions, without paying the BEAT, again provided it waived sufficient

deductions to stay below the base erosion threshold.

In each of these cases, under the standard economic model a business adopting these strategies would be presumed to accrue a non-tax, economic benefit from using a foreign related party rather than an unrelated party to conduct this aspect of its business. Under these final regulations, there would be no U.S. tax-related benefit associated with transacting with a foreign related party and thus any decisions made by a business to make a base erosion payment would occur because of the economic advantage it provides to the business, rather than that payment being avoided, diverted or otherwise distorted because it would result in the taxpayer becoming an applicable taxpayer subject to the BEAT. This economic advantage might arise, for example, because the business has a closer relationship with the foreign related party and its transactions with the foreign related party provide enhanced managerial control. In these circumstances, these activities would generally be beneficial to the U.S. economy.

Although the standard economic model projects an increase in base erosion payments and a benefit to the U.S. economy under these regulations relative to the alternative regulatory approach, it does not yield clear implications for the economic value of these payments. An inference about the marginal value of a base erosion payment depends on the marginal tax incurred by base erosion payments near the base erosion threshold, which in turn depends on (i) how close the taxpayer would be to the threshold; (ii) the quantity of its base erosion payments that are below the base erosion threshold and subject to tax if the base erosion threshold is exceeded; and (iii) other factors affecting the potential BEAT liability *such as the additional BEAT tax liability relative to non-BEAT tax liability in situations when significant tax credits are also subject to BEAT* (see generally, part I.A of this Special Analyses section).

Because of these factors, the difference in the non-tax value to businesses of a marginal base erosion payment between these regulations and alternative regulatory approach is complex and cannot be readily inferred.

In summary, for taxpayers who elect to waive deductions under these regulations, the Treasury Department and the IRS expect that relative to the alternative regulatory approach, these regulations would tend to:

- Reduce tax costs of additional economic activity in the United States

⁴ To the extent that this model does not capture all possible taxpayer circumstances, the Treasury Department recognizes that there may be some additional base erosion payments that come from taxpayers that would be applicable taxpayers under the alternative regulatory approach.

by those taxpayers in the situation where additional economic activity in the United States would tend to increase base erosion payments;

- Reduce tax-related incentives for otherwise economically inefficient business, contractual or accounting changes designed to avoid the taxpayer being an applicable taxpayer;
- Continue to fulfill the general intent and purpose of the statute by not providing tax incentives for certain large corporations to make deductible payments to foreign related parties in excess of 3 percent of the taxpayer's deductions; and
- Reduce the number of taxpayers that are applicable taxpayers and the overall amount of BEAT collected. This revenue effect is likely to be offset to some degree by the fact that some taxpayers are likely to elect to waive allowable deductions.

The Treasury Department and the IRS project that the final regulations will have economic effects greater than \$100 million per year (\$2020) relative to the no-action baseline. This determination is based on the substantial size of the businesses potentially affected by these regulations (3-year average annual gross receipts of \$500 million or above) and the general responsiveness of business activity to effective tax rates,⁵ one component of which is the deductibility of base erosion payments. Based on these two magnitudes, even modest changes in the deductibility of base erosion tax benefits (and in the certainty of that deductibility) provided by the final regulations, relative to the no-action baseline, can be expected to have annual effects greater than \$100 million (\$2020). The Treasury Department and the IRS have not produced a more precise estimate of the economic consequences of these regulations relative to the alternative regulatory approach. The economic effects of these regulations depend on (i) the number of taxpayers that would be close to and below the base erosion threshold under the alternative regulatory approach; (ii) the increase in the quantity of base erosion payments they would have under these regulations relative to the alternative regulatory approach; and (iii) the economic consequences of those increased base erosion payments. Items (ii) and (iii) are particularly difficult to estimate with any reasonable precision in part because they involve economic activities, including potential new economic activity in the United States,

that cannot be readily inferred from existing data or models available to the Treasury Department and the IRS.

The Treasury Department recognizes that taxpayers may incur compliance costs related to deciding whether to waive deductions and ensuring that procedural rules are followed but projects that any such compliance costs will likely be small because the accounting required for the relevant deductions is essentially the same under both these regulations and the alternative regulatory approach. Under both these regulations and the alternative regulatory approach, an applicable taxpayer would have to calculate its BEAT liability. The only additional step a taxpayer that otherwise would be an applicable taxpayer may choose to take under these regulations is to calculate its tax liability with the waiver of certain deductions (all of which the taxpayer would already have documented) in order to avoid being an applicable taxpayer. The taxpayer would make this additional calculation to consider whether waiver of those deductions would result in a lower tax liability. Because these costs are likely to be relatively small, the Treasury Department and the IRS have not estimated the change in compliance costs of this waiver relative to the alternative regulatory approach.

d. Waiver of Reinsurance Payments

The BEAT waiver election in the proposed regulations generally allowed the waiver of deductions but did not include the waiver of other base erosion tax benefits that were not technically deductions. The term "base erosion tax benefits" includes certain reinsurance payments that are treated under the Code as reductions to gross income rather than deductions and thus, under the proposed regulations, would not be eligible for a waiver. Because a reduction to income is generally economically similar to a deduction, in response to comments, the Treasury Department and the IRS have determined that the policy rationale for providing the BEAT waiver election also applies to insurance-related base erosion payments. Thus, these regulations further provide for the waiver of amounts treated as reductions to gross premiums and related payments that would otherwise be base erosion tax benefits within the definition of section 59A(c)(2)(A)(iii).

This provision will generally lead to an increase in reinsurance payments that are base erosion payments, relative to the alternative regulatory approach. The Treasury Department projects that because these payments are

economically similar to other payments that are allowed a waiver, this provision will treat similar income similarly and thereby improve the performance of the U.S. economy relative to a regulatory approach of not allowing a waiver for certain reinsurance items while allowing such a waiver for other deductions.

The Treasury Department and the IRS have not estimated the increase in reinsurance payments that are base erosion payments that is likely to result under these regulations, relative to the alternative regulatory approach, because currently available tax data include only (net) premiums and do not separately record reinsurance transactions. The Treasury Department and the IRS further have not estimated the economic consequences of taxpayers substituting reinsurance payments that are base erosion payments for reinsurance payments that would not be base erosion payments because the Treasury Department and the IRS do not have readily available models that could assess this value.

e. Number of Affected Taxpayers

These regulations affect all corporate taxpayers that satisfy the gross receipts test and base erosion percentage test and have base erosion payments. The Treasury Department and the IRS project that approximately 2,200 taxpayers are affected by these regulations. This estimate is based on the number of returns in the IRS's Statistics of Income (SOI) corporate sample as of July 28, 2020, that are recorded as having Form 991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts*, attached and that reported gross receipts of \$500 million or above in tax year 2018. These attachments have not yet been verified and could include blanks, duplicates, or forms that do not properly contain information related to the BEAT. Because this sample is preliminary, these returns have not yet been weighted for the extent to which they represent the population of corporate tax returns. This count includes paper returns.

These data show that 5,911 returns have Form 991 attached. Of these, 2,222 tax returns show gross receipts of \$500 million or more and 3,689 have gross receipts below \$500 million in 2018. Although the BEAT test for applicable taxpayer status depends on the average of gross receipts over a three-year period, these tax data have not yet been linked to previous years' data and thus do not reflect the 3-year average of gross receipts. Of these 5,911

⁵ See E. Zwick and J. Mahon, "Tax Policy and Heterogeneous Investment Behavior," at *American Economic Review* 2017, 107(1): 217–48 and articles cited therein.

tax returns, 393 returns paid the BEAT tax.

II. Paperwork Reduction Act

The collections of information in these final regulations with respect to section 59A are in §§ 1.59A–3(b)(3)(iii)(C), 1.59A–3(c)(6), and 1.6031(a)–1(b)(7). These final regulations retain the collections of information in the proposed regulations, with the addition of the collection of information in § 1.59A–3(b)(3)(iii)(C).

The collection of information in § 1.59A–3(b)(3)(iii)(C) permits an amount paid or accrued by a taxpayer to a partnership to be eligible for the base erosion payment exception with respect to effectively connected income. This exception applies to any amount treated as paid or accrued to a foreign related party under § 1.59A–7(b) or (c) to the

extent that the exception for effectively connected income provided in § 1.59A–3(b)(3)(iii)(A) would have applied if the amount paid or accrued had been made directly by the taxpayer to the foreign related party. To be eligible for this exception, a foreign related party or partnership must certify to the taxpayer that a payment to a partnership would have been effectively connected income if paid directly to the foreign related party. Section 1.59A–3(b)(3)(iii)(C) was added in response to comments. The collection of information associated with this addition allows a taxpayer to verify that the recipient of an amount paid or accrued to a foreign related party is eligible for the exception in § 1.59A–3(b)(3)(iii)(C). The IRS may use this information to ensure compliance with § 1.59A–3(b)(3)(iii)(C). For purposes of the Paperwork Reduction

Act of 1995 (44 U.S.C. 3507(d)) (“PRA”), the reporting burden associated with § 1.59A–3(b)(3)(iii)(C) will be reflected in the PRA submission associated with Form 8991 (see chart at the end of this part II of this Special Analyses section for the status of the PRA submission for Form 8991). The estimated number of respondents for the reporting burden associated with § 1.59A–3(b)(3)(iii)(C) is based on the number of taxpayers who filed a Form 1120–F with Line Y(1) (“Did a partnership allocate to the corporation a distributive share of income from a directly owned partnership interest, any of which is ECI or treated as ECI by the partnership or the partner?”) checked “yes”. As provided below, the IRS estimates the number of affected filers to be approximately 6,000.

	New	Revision of existing form	Number of respondents (estimate based on tax filings for taxable years 2018)
Y		N	6,000

As explained in the preamble to the proposed regulations, the collection of information in § 1.59A–3(c)(6) relates to an election to waive deductions allowed under the Code. The election to waive deductions is made by a taxpayer on its original or amended income tax return. A taxpayer makes the election on an annual basis by completing Form 8991, or as provided in applicable instructions. The instructions for Form 8991 currently describe how a taxpayer may make this election. The Form 8991 for the 2020 taxable year will incorporate this election.

As explained in the preamble to the proposed regulations, the collection of information in § 1.6031(a)–1(b)(7) requires a partner in a foreign partnership that: (1) Is not required to file a partnership return and (2) has made a payment or accrual that is treated as a base erosion payment of a partner under § 1.59A–7(c), to provide the information necessary to report any base erosion payments on Form 8991. The IRS intends that this information

will be collected by completing Form 8991.

The IRS is contemplating making revisions to Form 1065, Schedule K, and Schedule K–1 to take these final regulations into account, including through the proposed draft Schedules K–2 and K–3. In connection with the release of draft forms, the IRS invited comments from affected stakeholders.

For purposes of the Paperwork Reduction Act, the reporting burden associated with the collections of information with respect to section 59A will be reflected in the Paperwork Reduction Act Submission associated with Form 8991 (OMB control number 1545–0123).

The current status of the Paperwork Reduction Act submissions related to the BEAT is provided in the following table. The BEAT provisions are included in aggregated burden estimates for the OMB control numbers listed below which, in the case of 1545–0123, represents a total estimated burden time, including all other related forms and schedules for corporations, of 3.344

billion hours and total estimated monetized costs of \$61.558 billion (\$2019). The burden estimates provided in the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include but not isolate the estimated burden of only the BEAT requirements. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the final regulations. The Treasury Department and IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions imposed prior to the Act. No burden estimates specific to the final regulations are currently available. The Treasury Department has not estimated the burden, including that of any new information collections, related to the requirements under the final regulations. In addition, when available, drafts of IRS forms are posted for comment at www.irs.gov/draftforms.

Form	Type of filer	OMB No.(s)	Status
Form 8991	Business (NEW Model)	1545–0123	Approved by OIRA through 1/31/2021.

Link: <https://www.govinfo.gov/content/pkg/FR-2019-12-19/pdf/2019-27297.pdf#page=1>.

RELATED NEW OR REVISED TAX FORMS

	New	Revision of existing form	Number of respondents (2018, estimated)
Form 8991	Y	.....	6,000

The number of respondents in the Related New or Revised Tax Forms table was estimated by Treasury’s Office of Tax Analysis based on the number of returns in the IRS’s Statistics of Income (SOI) corporate sample as of July 28, 2020, that are recorded as having Form 8991 attached and that reported gross receipts of \$500 million or above in tax year 2018. Only certain large corporate taxpayers with gross receipts of at least \$500 million are expected to file this form.

III. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the BEAT and these regulations affect only aggregate groups of corporations with average annual gross receipts of at least \$500 million and that also make payments to foreign related parties in excess of the base erosion percentage test (that is, 3 percent or more of their deductible payments are to foreign related parties). Generally, only large businesses both have substantial gross receipts and make a significant portion of their deductible payments to foreign related parties. The \$500 million threshold for the gross receipts test is greater than any Small Business Administration size standard that is based on annual gross receipts. See generally 13 CFR part 121.

Pursuant to section 7805(f), the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does

not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (“CRA”). Under section 801(3) of the CRA, a major rule generally takes effect 60 days after the rule is published in the **Federal Register**. Accordingly, the Treasury Department and IRS are adopting these final regulations with the delayed effective date generally prescribed under the CRA.

Drafting Information

The principal authors of these final regulations are Sheila Ramaswamy, Karen Walny, and Azeka Abramoff of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.59A–0 is revised to read as follows:

§ 1.59A–0 Table of contents.

This section contains a listing of the headings for §§ 1.59A–1, 1.59A–2, 1.59A–3, 1.59A–4, 1.59A–5, 1.59A–6, 1.59A–7, 1.59A–8, 1.59A–9, and 1.59A–10.

§ 1.59A–1 Base erosion and anti-abuse tax.

- (a) Purpose.
- (b) Definitions.
 - (1) Aggregate group.
 - (2) Applicable section 38 credits.
 - (3) Applicable taxpayer.
 - (4) Bank.
 - (5) Base erosion and anti-abuse tax rate.
 - (6) Business interest expense.
 - (7) Deduction.
 - (8) Disallowed business interest expense carryforward.
 - (9) Domestic related business interest expense.
 - (10) Foreign person.
 - (11) Foreign related business interest expense.
 - (12) Foreign related party.
 - (13) Gross receipts.
 - (14) Member of an aggregate group.
 - (15) Registered securities dealer.
 - (16) Regular tax liability.
 - (17) Related party.
 - (i) In general.
 - (ii) 25-percent owner.
 - (iii) Application of section 318.
 - (18) TLAC long-term debt required amount.
 - (19) TLAC securities amount.
 - (20) TLAC security.
 - (21) Unrelated business interest expense.

§ 1.59A–2 Applicable taxpayer.

- (a) Scope.
- (b) Applicable taxpayer.
- (c) Aggregation rules.
 - (1) In general.
 - (2) Aggregate group determined with respect to each taxpayer.
 - (i) In general.
 - (ii) Change in the composition of an aggregate group.
 - (3) Taxable year of members of an aggregate group.
 - (4) Periods before and after a corporation is a member of an aggregate group.
 - (i) In general.
 - (ii) Deemed taxable year-end.

(iii) Items allocable to deemed taxable years before and after deemed taxable year-end.

(5) Short taxable year.

(i) Short period of the taxpayer.

(A) In general.

(B) Determining the gross receipts and base erosion percentage of the aggregate group of a taxpayer for a short period.

(ii) Short period of a member of the taxpayer's aggregate group.

(A) Multiple taxable years of a member of the taxpayer's aggregate group comprised of more than 12 months.

(B) Short period or periods of a member of the taxpayer's aggregate group comprised of fewer than 12 months from change in taxable year.

(iii) Anti-abuse rule.

(6) Treatment of predecessors.

(i) In general.

(ii) No duplication.

(7) Partnerships.

(8) Transition rule for aggregate group members with different taxable years.

(9) Consolidated groups.

(d) Gross receipts test.

(1) Amount of gross receipts.

(2) Taxpayer not in existence for entire three-year period.

(3) Gross receipts of foreign corporations.

(4) Gross receipts of an insurance

company.

(5) Reductions in gross receipts.

(e) Base erosion percentage test.

(1) In general.

(2) Base erosion percentage test for banks and registered securities dealers.

(i) In general.

(ii) Aggregate groups.

(iii) De minimis exception for banking and registered securities dealer activities.

(3) Computation of base erosion percentage.

(i) In general.

(ii) Certain items not taken into account in denominator.

(iii) Effect of treaties on base erosion percentage determination.

(iv) Amounts paid or accrued between members of a consolidated group.

(v) Deductions and base erosion tax benefits from partnerships.

(vi) Mark-to-market positions.

(vii) Reinsurance losses incurred and claims payments.

(viii) Certain payments that qualify for the effectively connected income exception and another base erosion payment exception.

(f) Examples.

(1) Example 1: Mark-to-market.

(i) Facts.

(ii) Analysis.

(2) Example 2: Member leaving an aggregate group.

(i) Facts.

(ii) Analysis.

§ 1.59A-3 *Base erosion payments and base erosion tax benefits.*

(a) Scope.

(b) Base erosion payments.

(1) In general.

(2) Operating rules.

(i) In general.

(ii) Amounts paid or accrued in cash and other consideration.

(iii) Transactions providing for net payments.

(iv) Amounts paid or accrued with respect to mark-to-market position.

(v) Coordination among categories of base erosion payments.

(vi) Certain domestic passthrough entities.

(A) In general.

(B) Amount of base erosion payment.

(C) Specified domestic passthrough.

(D) Specified foreign related party.

(vii) Transfers of property to related taxpayers.

(viii) Reductions to determine gross income.

(ix) Losses recognized on the sale or transfer of property.

(3) Exceptions to base erosion payment.

(i) Certain services cost method amounts.

(A) In general.

(B) Eligibility for the services cost method exception.

(C) Adequate books and records.

(D) Total services cost.

(ii) Qualified derivative payments.

(iii) Effectively connected income.

(A) In general.

(B) Application to certain treaty residents.

(C) Application to partnerships.

(iv) Exchange loss on a section 988 transaction.

(v) Amounts paid or accrued with respect to TLAC securities and foreign TLAC securities.

(A) In general.

(B) Limitation on exclusion for TLAC securities.

(C) Scaling ratio.

(D) Average domestic TLAC securities amount.

(E) Average TLAC long-term debt required amount.

(F) Limitation on exclusion for foreign TLAC securities.

(1) In general.

(2) Foreign TLAC long-term debt required amount.

(3) No specified minimum provided by local law.

(4) Foreign TLAC security.

(vi) Amounts paid or accrued in taxable years beginning before January 1, 2018.

(vii) Business interest carried forward from taxable years beginning before January 1, 2018.

(viii) Specified nonrecognition transactions.

(A) In general.

(B) Other property transferred to a foreign related party in a specified nonrecognition transaction.

(C) Other property received from a foreign related party in certain specified nonrecognition transactions.

(D) Definition of other property.

(E) Allocation of other property.

(ix) Reinsurance losses incurred and claims payments.

(A) In general.

(B) Regulated foreign insurance company.

(4) Rules for determining the amount of certain base erosion payments.

(i) Interest expense allocable to a foreign corporation's effectively connected income.

(A) Methods described in § 1.882-5.

(B) U.S.-booked liabilities determination.

(C) U.S.-booked liabilities in excess of U.S.-connected liabilities.

(D) Election to use financial statements.

(E) Coordination with certain tax treaties.

(1) In general.

(2) Hypothetical § 1.882-5 interest expense defined.

(3) Consistency requirement.

(F) Coordination with exception for foreign TLAC securities.

(ii) Other deductions allowed with respect to effectively connected income.

(iii) Depreciable property.

(iv) Coordination with ECI exception.

(v) Coordination with certain tax treaties.

(A) Allocable expenses.

(B) Internal dealings under certain income tax treaties.

(vi) Business interest expense arising in taxable years beginning after December 31, 2017.

(c) Base erosion tax benefit.

(1) In general.

(2) Exception to base erosion tax benefit.

(i) In general.

(ii) Branch-level interest tax.

(3) Effect of treaty on base erosion tax benefit.

(4) Application of section 163(j) to base erosion payments.

(i) Classification of payments or accruals of business interest expense based on the payee.

(A) Classification of payments or accruals of business interest expense of a corporation.

(B) Classification of payments or accruals of business interest expense by a partnership.

(C) Classification of payments or accruals of business interest expense paid or accrued to a foreign related party that is subject to an exception.

(1) ECI exception.

(2) TLAC interest and interest subject to withholding tax.

(ii) Ordering rules for business interest expense that is limited under section 163(j)(1) to determine which classifications of business interest expense are deducted and which classifications of business interest expense are carried forward.

(A) In general.

(B) Ordering rules for treating business interest expense deduction and disallowed business interest expense carryforwards as foreign related business interest expense, domestic related business interest expense, and unrelated business interest expense.

(1) General ordering rule for allocating business interest expense deduction between classifications.

(2) Ordering of business interest expense incurred by a corporation.

(3) Ordering of business interest expense incurred by a partnership and allocated to a corporate partner.

(5) Allowed deduction.

(6) Election to waive allowed deductions.

(i) In general.

(ii) Time and manner for election to waive deduction.

(A) In general.

(B) Information required to make the election to waive allowed deductions.

(iii) Effect of election to waive deduction.

(A) In general.

(1) Consistent treatment.

(2) No allocation and apportionment of waived deductions.

(3) Effect of waiver of deductions described in §§ 1.861–10 and 1.861–10T.

(4) Effect of the election to waive deductions on the stock basis of a consolidated group member.

(B) Effect of the election to waive deductions disregarded for certain purposes.

(C) Not a method of accounting.

(D) Effect of the election in determining section 481(a) adjustments.

(iv) Rules applicable to partners and partnerships.

(A) In general.

(B) Rule for determining the adjusted basis of a partner's interest in a partnership.

(C) Rule for applying section 163(j).

(D) Limited application of election to waive deductions with respect to adjustments made pursuant to audit procedures under sections 6221 through 6241.

(v) Rule applicable to premium and other consideration paid or accrued by the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A).

(d) Examples.

(1) Example 1: Determining a base erosion payment.

(i) Facts.

(ii) Analysis.

(2) Example 2: Interest allocable under § 1.882–5.

(i) Facts.

(ii) Analysis.

(3) Example 3: Interaction with section 163(j).

(i) Facts.

(ii) Analysis.

(A) Classification of business interest.
(B) Ordering rules for disallowed business interest expense carryforward.

(4) Example 4: Interaction with section 163(j); carryforward.

(i) Facts.

(ii) Analysis.

(A) Classification of business interest.
(B) Ordering rules for disallowed business interest expense carryforward.

(5) Example 5: Interaction with section 163(j); carryforward.

(i) Facts.

(ii) Analysis.

(6) Example 6: Interaction with section 163(j); partnership.

(i) Facts.

(ii) Partnership level analysis.

(iii) Partner level allocations analysis.

(iv) Partner level allocations for determining base erosion tax benefits.

(v) Computation of modified taxable income.

(7) Example 7: Transfers of property to related taxpayers.

(i) Facts.

(ii) Analysis.

(A) Year 1.

(B) Year 2.

(8) Example 8: Effect of election to waive deduction on method of accounting.

(i) Facts.

(ii) Analysis.

(9) Example 9: Change of accounting method when taxpayer has waived a deduction.

(i) Facts.

(ii) Analysis.

(A) Computation of the section 481(a) adjustment.

(B) Computation of basis adjustments.

§ 1.59A–4 *Modified taxable income.*

(a) Scope.

(b) Computation of modified taxable income.

(1) In general.

(2) Modifications to taxable income.

(i) Base erosion tax benefits.

(ii) Certain net operating loss deductions.
(3) Rule for holders of a residual interest in a REMIC.

(c) Examples.

(1) Example 1: Current year loss.

(i) Facts.

(ii) Analysis.

(2) Example 2: Net operating loss deduction.

(i) Facts.

(ii) Analysis.

§ 1.59A–5 *Base erosion minimum tax amount.*

(a) Scope.

(b) Base erosion minimum tax amount.

(1) In general.

(2) Calculation of base erosion minimum tax amount.

(3) Credits that do not reduce regular tax liability.

(i) Taxable years beginning on or before December 31, 2025.

(ii) Taxable years beginning after December 31, 2025.

(c) Base erosion and anti-abuse tax rate.

(1) In general.

(i) Calendar year 2018.

(ii) Calendar years 2019 through 2025.

(iii) Calendar years after 2025.

(2) Increased rate for banks and registered securities dealers.

(i) In general.

(ii) De minimis exception to increased rate for banks and registered securities dealers.

(3) Application of section 15 to tax rates in section 59A.

(i) New tax.

(ii) Change in tax rate pursuant to section 59A(b)(1)(A).

(iii) Change in rate pursuant to section 59A(b)(2).

§ 1.59A–6 *Qualified derivative payment.*

(a) Scope.

(b) Qualified derivative payment.

(1) In general.

(2) Reporting requirements.

(i) In general.
(ii) Failure to satisfy the reporting requirement.

(iii) Reporting of aggregate amount of qualified derivative payments.

(iv) Transition period for qualified derivative payment reporting.

(3) Amount of any qualified derivative payment.

(i) In general.

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- § 1.59A-9 *Anti-abuse and recharacterization rules.*
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 - (b) Anti-abuse rules.
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- (4) Nonrecognition transactions.
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 - (i) Facts.
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 - (i) Facts.
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 - (11) Example 10: Acquisition of depreciable property in a nonrecognition transaction.
 - (i) Facts.
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 - (12) Example 11: Transactions between related parties with a principal purpose of increasing the adjusted basis of property.
 - (i) Facts.
 - (ii) Analysis.
- § 1.59A-10 *Applicability date.*
- (a) General applicability date.
 - (b) Exception.

§ 1.59A-1 [Amended]

■ **Par. 3.** Section 1.59A-1 is amended by removing the language in the “Remove” column from wherever it appears and adding in its place the language in the “Add” column for each paragraph listed in the table, as set forth below.

Paragraph	Remove	Add
(b)(6)	§ 1.163(j)-1(b)(2)	§ 1.163(j)-1(b)(3).
(b)(8)	§ 1.163(j)-1(b)(9)	§ 1.163(j)-1(b)(11).

■ **Par. 4.** Section 1.59A-2 is amended by:

- 1. In paragraph (c)(1), adding a sentence to the end of the paragraph.
- 2. Adding paragraphs (c)(2)(ii), (c)(4) through (6), and (c)(9).
- 3. In paragraph (f)(1), revising the paragraph heading.
- 4. Adding paragraph (f)(2).

The additions and revisions read as follows:

§ 1.59A-2 Applicable taxpayer.

* * * * *

- (c) * * *
- (1) * * * For purposes of this paragraph (c)(1), each payment or accrual is treated as a separate transaction.
- (2) * * *

(ii) *Change in the composition of an aggregate group.* A change in ownership of the taxpayer (for example, a sale of the taxpayer to a third party) does not

cause the taxpayer to leave its own aggregate group. Instead, any members of the taxpayer's aggregate group before the change in ownership that are no longer members following the change in ownership are treated as having left the taxpayer's aggregate group, and any new members that become members of the taxpayer's aggregate group following the change in ownership are treated as having joined the taxpayer's aggregate group. A change in ownership of another member of the aggregate group of the taxpayer (for example, a sale of the member to a third party) may result in the member joining or leaving the aggregate group of the taxpayer. See paragraph (c)(4) of this section for the treatment of members joining or leaving the aggregate group of a taxpayer.

* * * * *

(4) *Periods before and after a corporation is a member of an aggregate*

group—(i) *In general.* Solely for purposes of this section, to determine the gross receipts and the base erosion percentage of the aggregate group of a taxpayer, the taxpayer takes into account only the portion of another corporation's taxable year during which the corporation is a member of the aggregate group of the taxpayer. The gross receipts, base erosion tax benefits, and deductions of a corporation that are properly included in the gross receipts and base erosion percentage of the aggregate group of a taxpayer are not reduced as a result of the member leaving the aggregate group of the taxpayer.

(ii) *Deemed taxable year-end.* Solely for purposes of this paragraph (c), if a corporation leaves or joins the aggregate group of a taxpayer, the corporation is treated as ceasing to be a member of the aggregate group at the time of its taxable year-end, or becoming a member of the

aggregate group immediately after the time of its taxable year-end, resulting from the transaction. For purposes of this paragraph (c), if a corporation joins or leaves an aggregate group in a transaction that does not result in the corporation having a taxable year-end, the corporation is treated as having a taxable year-end (“deemed taxable year-end”) at the end of the day on which the transaction occurs.

(iii) *Items allocable to deemed taxable years before and after deemed taxable year-end.* Solely for purposes of this paragraph (c), a corporation that has a deemed taxable year-end determines gross receipts, base erosion tax benefits, and deductions attributable to the deemed taxable year ending upon, or beginning immediately after, the deemed taxable year-end by either treating the corporation’s books as closing (“deemed closing of the books”) at the deemed taxable year-end or, in the case of items other than extraordinary items, allocating those items on a pro-rata basis without a closing of the books. Extraordinary items are allocated to the deemed taxable year ending upon, or beginning immediately after, the deemed taxable year-end based on the day that they are taken into account. For purposes of applying this paragraph (c)(4)(iii), extraordinary items that are attributable to a transaction that occurs during the portion of the corporation’s day after the event resulting in the corporation joining or leaving the aggregate group are treated as taken into account at the beginning of the following day. Additionally, for purposes of applying this paragraph (c)(4)(iii), “extraordinary items” include the items enumerated in § 1.1502–76(b)(2)(ii)(C) as well as any other payment not made in the ordinary course of business that would be treated as a base erosion payment.

(5) *Short taxable year*—(i) *Short period of the taxpayer*—(A) *In general.* Solely for purposes of this section, if a taxpayer has a taxable year of fewer than 12 months (a short period), the gross receipts, base erosion tax benefits, and deductions of the taxpayer are annualized by multiplying the total amount for the short period by 365 and dividing the result by the number of days in the short period.

(B) *Determining the gross receipts and base erosion percentage of the aggregate group of a taxpayer for a short period.* When a taxpayer has a taxable year that is a short period and a member of the taxpayer’s aggregate group does not have a taxable year that ends with or within the taxpayer’s taxable year as a result of the taxpayer’s short period, the taxpayer must use a reasonable

approach to determine the gross receipts and base erosion percentage of its aggregate group for the short period. A reasonable approach should neither over-count nor under-count the gross receipts, base erosion tax benefits, and deductions of the aggregate group of the taxpayer. A reasonable approach does not include an approach that does not take into account the gross receipts, base erosion tax benefits, or deductions of the member. The taxpayer must consistently apply the reasonable approach. Examples of a reasonable approach may include an approach that takes into account 12 months of gross receipts, base erosion tax benefits, and deductions of the member by reference to—

(1) The 12-month period ending on the last day of the short period;

(2) The member’s taxable year that ends nearest to the last day of the short period or that begins nearest to the first day of the short period; or

(3) An average of the two taxable years of the member ending before and after the short period.

(ii) *Short period of a member of the taxpayer’s aggregate group*—(A) *Multiple taxable years of a member of the taxpayer’s aggregate group comprised of more than 12 months.* If a member of a taxpayer’s aggregate group has more than one taxable year ending with or within the taxpayer’s taxable year, and the member’s taxable years ending with or within the taxpayer’s taxable year are comprised of more than 12 months in total, then the aggregate group member’s gross receipts, base erosion tax benefits, and deductions are annualized for purposes of determining the gross receipts and base erosion percentage of the taxpayer’s aggregate group. The aggregate group member’s gross receipts, base erosion tax benefits, and deductions are annualized by multiplying the total amount for the member’s taxable years by 365 and dividing the result by the total number of days in the multiple taxable years.

(B) *Short period or periods of a member of the taxpayer’s aggregate group comprised of fewer than 12 months from change in taxable year.* If, as a result of a member of a taxpayer’s aggregate group changing its taxable year-end (other than as a result of the application of § 1.1502–76(a)), the member’s taxable year or years ending with or within the taxpayer’s taxable year are comprised of fewer than 12 months in total, then the aggregate group member’s gross receipts, base erosion tax benefits, and deductions are annualized for purposes of determining the gross receipts and base erosion percentage of the taxpayer’s aggregate

group. The aggregate group member’s gross receipts, base erosion tax benefits, and deductions are annualized by multiplying the total amount for the member’s taxable year or years by 365 and dividing the result by the total number of days in the taxable year or years.

(iii) *Anti-abuse rule.* If a taxpayer or a member of a taxpayer’s aggregate group enters into a transaction (or series of transactions), plan, or arrangement with another corporation that is a member of the aggregate group or a foreign related party that has a principal purpose of changing the period taken into account under the gross receipts test or the base erosion percentage test to avoid applicable taxpayer status under paragraph (b) of this section, then the gross receipts test or base erosion percentage test, respectively, applies as if that transaction (or series of transactions), plan, or arrangement had not occurred.

(6) *Treatment of predecessors*—(i) *In general.* Solely for purposes of this section, in determining gross receipts under paragraph (d) of this section, any reference to a taxpayer includes a reference to any predecessor of the taxpayer. For this purpose, a predecessor is the distributor or transferor corporation in a transaction described in section 381(a) in which the taxpayer is the acquiring corporation. For purposes of determining the gross receipts of a predecessor that are taken into account by a taxpayer, the operating rules set forth in this paragraph (c) and in paragraph (d) of this section are applied to the same extent they were applied to the predecessor.

(ii) *No duplication.* If the taxpayer or any member of its aggregate group is also a predecessor of the taxpayer or any member of its aggregate group, the gross receipts of each member are taken into account only once.

* * * * *

(9) *Consolidated groups.* For the treatment of consolidated groups for purposes of determining gross receipts and base erosion tax benefits, see § 1.1502–59A(b).

* * * * *

(f) * * *

(1) *Example 1: Mark-to market* * * *

(2) *Example 2: Member leaving an aggregate group*—(i) *Facts.* Parent Corporation wholly owns Corporation 1 and Corporation 2. Each corporation is a domestic corporation and a calendar-year taxpayer that does not file a consolidated return. The aggregate group of Corporation 1 includes Parent Corporation and Corporation 2. At noon

on June 30, Year 1, Parent Corporation sells the stock of Corporation 2 to Corporation 3, an unrelated domestic corporation, in exchange for cash consideration. Before the acquisition, Corporation 3 was not a member of an aggregate group. Corporation 2 and Corporation 3 do not file a consolidated return.

(ii) *Analysis.* (A) For purposes of section 59A, to determine the gross receipts and base erosion percentage of the aggregate group of Corporation 1 for calendar Year 1, Corporation 2 is treated as having a taxable year-end at the end of the day on June 30, Year 1, as a result of the sale. Corporation 2 leaves the aggregate group of Corporation 1 and Parent Corporation at the end of the day on June 30, Year 1. The aggregate group of Corporation 1 takes into account only the gross receipts, base erosion tax benefits, and deductions of Corporation 2 allocable to the period from January 1 to the end of the day on June 30, Year 1, in accordance with paragraph (c)(4)(ii) and (iii) of this section. The same results apply to the aggregate group of Parent Corporation for calendar Year 1. See paragraph (d)(1) and (2) of this section for the periods taken into account in determining whether the taxpayer or its aggregate group satisfies the gross receipts test.

(B) For purposes of section 59A, to determine the gross receipts and base erosion percentage of the aggregate group of Corporation 2 for calendar Year 1, each of Parent Corporation, Corporation 1, and Corporation 3 are treated as having a taxable year-end at the end of the day on June 30, Year 1. Because Corporation 2 does not have a short taxable year, paragraph (c)(5)(i) of this section does not apply. The aggregate group of Corporation 2 takes into account the gross receipts, base erosion tax benefits, and deductions of Parent Corporation and Corporation 1 allocable to the period from January 1 to the end of the day on June 30, Year 1, and the gross receipts, base erosion tax benefits, and deductions of Corporation 3 allocable to the period from July 1 to December 31, Year 1 in accordance with paragraph (c)(4)(ii) and (iii) of this section. See paragraph (d)(1) and (2) of this section for the periods taken into account in determining whether the taxpayer or its aggregate group satisfies the gross receipts test.

■ **Par. 5.** Section 1.59A–3 is amended by adding paragraphs (b)(3)(iii)(C), (c)(5) and (6), and (d)(8) and (9) to read as follows:

§ 1.59A–3 Base erosion payments and base erosion tax benefits.

* * * * *

(b) * * *
(3) * * *
(iii) * * *

(C) *Application to partnerships.* To the extent that paragraph (b)(3)(iii)(A) or (B) of this section would apply to a payment or accrual made directly by a taxpayer to a foreign related party, paragraph (b)(3)(iii)(A) or (B) of this section apply to an amount treated as paid or accrued by a taxpayer to a foreign related party under § 1.59A–7(b) or (c) (generally applying aggregate principles to treat partnership transactions as partner-level transactions for purposes of section 59A). The certification requirement in paragraph (b)(3)(iii)(A) of this section is met if the taxpayer receives a written statement from the foreign related party that is comparable to the certification provided in paragraph (b)(3)(iii)(A) of this section but based on the deemed transaction under § 1.59A–7(b) or (c) and the extent to which paragraph (b)(3)(iii)(A) or (B) of this section would have applied to that deemed transaction. The taxpayer may rely on the written statement unless it has reason to know or actual knowledge that the statement is incorrect.

* * * * *

(c) * * *

(5) *Allowed deduction.* Solely for purposes of paragraph (c)(1) of this section, all deductions (and any premium or other consideration paid or accrued by the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A)) that could be properly claimed by a taxpayer for the taxable year (determined after giving effect to the taxpayer's permissible method of accounting and to any election, such as the election under section 173 to capitalize circulation expenditures or the election under section 168(g)(7) to use the alternative depreciation system of depreciation) are treated as allowed deductions under chapter 1 of subtitle A of the Internal Revenue Code.

(6) *Election to waive allowed deductions—(i) In general.* If a taxpayer elects to waive certain deductions, in whole or in part, pursuant to this paragraph (c)(6)(i), the amount of allowed deductions as described in paragraph (c)(5) of this section is reduced by the amounts that are properly waived. In order to make the election or increase the amount of the deduction waived, the taxpayer must determine that it could satisfy the requirements of § 1.59A–2(b) absent the election to waive certain deductions. For rules applicable to partners and partnerships, see paragraph (c)(6)(iv) of

this section. For rules addressing waiver of premium or other consideration paid or accrued by a taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A), see paragraph (c)(6)(v) of this section.

(ii) *Time and manner for election to waive deduction—(A) In general.* A taxpayer may make the election described in paragraph (c)(6)(i) of this section on its original filed Federal income tax return. In addition, a taxpayer may elect to waive deductions or increase the amount of deductions waived pursuant to the election described in paragraph (c)(6)(i) of this section on an amended Federal income tax return filed within the later of three years from the date the original return was filed, taking into account section 6501(b)(1), for the taxable year for which the election is made or the period described in section 6501(c)(4), or during the course of an examination of the taxpayer's income tax return for the relevant taxable year pursuant to procedures prescribed by the Commissioner. However, a taxpayer may not decrease the amount of deductions waived by the election, or otherwise revoke the election that is described in paragraph (c)(6)(i) of this section on any amended Federal income tax return or during the course of an examination. To make the election, a taxpayer must complete the appropriate part of Form 8991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts* (or successor), including the information described in paragraph (c)(6)(ii)(B) of this section and any other information required by the form or instructions. A taxpayer makes the election described in paragraph (c)(6)(i) of this section on an annual basis, and the taxpayer does not need the consent of the Commissioner if the taxpayer chooses not to make the election for a subsequent taxable year. The election described in paragraph (c)(6)(i) of this section may not be made in any other manner than as described in this paragraph (c)(6)(ii) (for example, by filing an application for a change in accounting method).

(B) *Information required to make the election to waive allowed deductions.* To make this election, a taxpayer must maintain contemporaneous documentation and provide information related to each deduction waived as required by applicable forms and instructions issued by the Commissioner, including—

(1) A description of the item or property to which the deduction relates, including sufficient information to

identify that item or property on the taxpayer's books and records;

(2) The date on which, or period in which, the waived deduction was paid or accrued;

(3) The provision of the Internal Revenue Code (and regulations, as applicable) that allows the deduction for the item or property to which the election relates;

(4) The amount of the deduction that is claimed for the taxable year with respect to the item or property;

(5) The amount of the deduction being waived for the taxable year with respect to the item or property;

(6) A description of where the deduction is reflected (or would have been reflected) on the Federal income tax return (such as a line number); and

(7) The name, Taxpayer Identification Number (or, if the foreign person does not have a Taxpayer Identification Number, the foreign equivalent), and country of organization of the foreign related party that is or will be the recipient of the payment that generates the deduction.

(iii) *Effect of election to waive deduction—(A) In general—(1)*

Consistent treatment. Except as otherwise provided in this paragraph (c)(6)(iii), any deduction waived under paragraph (c)(6)(i) of this section is treated as having been waived for all purposes of the Internal Revenue Code and regulations.

(2) *No allocation and apportionment of waived deductions.* The waiver of deductions described in paragraph (c)(6)(i) of this section is treated as occurring before the allocation and apportionment of deductions under §§ 1.861–8 through 1.861–14T and 1.861–17 (such as for purposes of section 904).

(3) *Effect of waiver of deductions described in §§ 1.861–10 and 1.861–10T.* To the extent that any waived deduction is interest expense that would have been directly allocated under the rules of § 1.861–10 or 1.861–10T and would have resulted in the reduction of value of any assets for purposes of allocating other interest expense under §§ 1.861–9 and 1.861–9T, the value of the assets is reduced to the same extent as if the taxpayer had not elected to waive the deduction.

(4) *Effect of the election to waive deductions on the stock basis of a consolidated group member.* For purposes of § 1.1502–32, any deduction waived under paragraph (c)(6)(i) of this section is a noncapital, nondeductible expense under § 1.1502–32(b)(2)(iii).

(B) *Effect of the election to waive deductions disregarded for certain purposes.* If a taxpayer makes the

election to waive a deduction, in whole or in part, under paragraph (c)(6)(i) of this section, the election is disregarded for determining—

(1) The taxpayer's overall method of accounting, or the taxpayer's method of accounting for any item, under section 446;

(2) Whether a change in the taxpayer's overall plan of accounting or the taxpayer's treatment of a material item is a change in method of accounting under section 446(e) and § 1.446–1(e);

(3) The amount allowable under subtitle A of the Internal Revenue Code for depreciation or amortization for purposes of section 167(c) and section 1016(a)(2) or section 1016(a)(3) and any other adjustment to basis under section 1016(a);

(4) For purposes of applying the exclusive apportionment rule in § 1.861–17(b), the geographic source where the research and experimental activities which account for more than fifty percent of the amount of the deduction for research and experimentation was performed;

(5) The application of section 482;

(6) The amount of the taxpayer's earnings and profits; and

(7) Any other item as necessary to prevent a taxpayer from receiving the benefit of a waived deduction.

(C) *Not a method of accounting.* The election described in paragraph (c)(6)(i) of this section is not a method of accounting under section 446.

(D) *Effect of the election in determining section 481(a) adjustments.*

A taxpayer making the election described in paragraph (c)(6)(i) of this section agrees that if the method of accounting for a waived deduction is changed, the amount of adjustment taken into account under section 481(a)(2) is determined without regard to the election described in paragraph (c)(6)(i) of this section. As a result, a waived deduction has no effect on the amount of a section 481(a) adjustment compared to what the adjustment would have been if the deduction had not been waived. See paragraph (d)(9) of this section (*Example 9*).

(iv) *Rules applicable to partners and partnerships—(A) In general.* Except as provided in paragraph (c)(6)(iv)(D) of this section, deductions allocated to a corporate partner by a partnership may only be waived by the partner and not by the partnership, and then only to the extent the partner otherwise qualifies for the waiver under paragraph (c)(6) of this section. For purposes of complying with the documentation requirements in paragraph (c)(6)(ii)(B) of this section, the partner is not required to report the information in paragraphs (c)(6)(ii)(B)(2)

and (3) of this section, and in lieu of reporting the information in paragraphs (c)(6)(ii)(B)(1) of this section, the partner is required to report the partnership from which the item is allocated.

(B) *Rule for determining the adjusted basis of a partner's interest in a partnership.* If a partner elects to waive a deduction or increases the amount of deduction waived with respect to deductions allocated to it by a partnership, the partner treats the waived amount as a nondeductible expenditure under section 705(a)(2)(B).

(C) *Rule for applying section 163(j).* If a partner waives a deduction pursuant to paragraph (c)(6)(iv)(A) of this section that was taken into account by the partnership in determining the partnership's adjusted taxable income for purposes of section 163(j), then the increase in the partner's income resulting from the waiver is treated by the partner (but not the partnership) as a partner basis item (as defined in § 1.163(j)–6(b)(2)) for purposes of section 163(j).

(D) *Limited application of election to waive deductions with respect to adjustments made pursuant to audit procedures under sections 6221 through 6241.* Except as provided in this paragraph (c)(6)(iv)(D), a partner is not permitted to waive any adjustment by the Secretary to any partnership-related items that is made pursuant to subchapter C of chapter 63. A partner in a partnership subject to subchapter C of chapter 63 may only make an election to waive any increase in a deduction due to an adjustment made under subchapter C of chapter 63 that the partner takes into account under section 6225(c)(2)(A), 6226, or 6227 in a manner consistent with paragraph (c)(6) of this section. If the partner makes an election under paragraph (c)(6)(i) of this section, the partner will compute its additional reporting year tax (as described in § 301.6226–3 of this chapter) or amount due under § 301.6225–2(d)(2)(ii)(A) of this chapter taking into account the rules in paragraph (c)(6) of this section with respect to the increase in the deduction that is waived.

(v) *Rule applicable to premium and other consideration paid or accrued by the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A).* For purposes of paragraph (c)(6)(i) of this section, a taxpayer may elect to waive (or increase the amount waived of) any premium or other consideration paid or accrued by the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A) that would be a base erosion tax benefit

within the meaning of section 59A(c)(2)(A)(iii), in accordance with the rules and principles of this paragraph (c)(6).

(d) * * *

(8) *Example 8: Effect of election to waive deduction on method of accounting*—(i) *Facts*. DC, a domestic corporation, purchased and placed in service a depreciable asset (Asset A) from a foreign related party on the first day of its taxable year 1 for \$100x. DC elects to use the alternative depreciation system under section 168(g) to depreciate all properties placed in service during taxable year 1. Asset A is not eligible for the additional first year depreciation deduction. Beginning in taxable year 1, DC depreciates Asset A under the alternative depreciation system using the straight-line depreciation method, a 5-year recovery period, and the half-year convention. This depreciation method, recovery period, and convention are permissible for Asset A under section 168(g). On its timely filed original Federal income tax return for taxable year 1, DC does not elect to waive any deductions and DC claims a depreciation deduction of \$10x for Asset A. On its timely filed original Federal income tax return for taxable year 2, DC does not elect to waive any deductions and DC claims a depreciation deduction of \$20x for Asset A. During taxable year 3, DC files an amended return for taxable year 1 to elect to waive the depreciation deduction for Asset A and reports in accordance with paragraph (c)(6)(ii) of this section with its amended return for taxable year 1 that the amount of the waived depreciation deduction for Asset A is \$10x and the amount of the claimed depreciation deduction is \$0x.

(ii) *Analysis*. Pursuant to paragraph (c)(6)(iii)(B)(1) of this section, DC's election to waive the depreciation deduction for Asset A for taxable year 1 is disregarded for determining DC's method of accounting for Asset A. Accordingly, after DC's election to waive the depreciation deduction for Asset A for taxable year 1, DC's method of accounting for depreciation for Asset A continues to be the straight-line depreciation method, a 5-year recovery period, and the half-year convention. Pursuant to paragraph (c)(6)(iii)(C) of this section, the election made by DC in taxable year 3 on its amended return for taxable year 1 is not a method of accounting.

(9) *Example 9: Change of accounting method when taxpayer has waived a deduction*—(i) *Facts*. DC, a domestic corporation, purchased and placed in service a depreciable asset (Asset B) from a foreign related party on the first

day of its taxable year 1 for \$100x. DC elects to use the alternative depreciation system under section 168(g) to depreciate all properties placed in service during taxable year 1. Asset B is not eligible for the additional first year depreciation deduction. Beginning in taxable year 1, DC depreciates Asset B under the alternative depreciation system using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. Under this method of accounting, the depreciation deductions for Asset B are \$5x for taxable year 1 and \$10x for taxable year 2. However, for taxable years 1 and 2, DC elects to waive \$3x and \$6x, respectively, of the depreciation deductions for Asset B and reports the information required under paragraph (c)(6)(ii) of this section with its returns. In taxable year 3, DC realizes that the correct recovery period for Asset B is 5 years. If DC had used the correct recovery period for Asset B, the depreciation deductions for Asset B would have been \$10x for taxable year 1 and \$20x for taxable year 2. DC timely files a Form 3115 to change its method of accounting for Asset B from a 10-year recovery period to a 5-year recovery period, beginning with taxable year 3. DC was not under examination as of the date on which it timely filed this Form 3115.

(ii) *Analysis*—(A) *Computation of the section 481(a) adjustment*. In determining the net negative section 481(a) adjustment for this method change, DC compares the depreciation deductions under its present method of accounting to the depreciation deductions under its proposed method of accounting. Pursuant to paragraph (c)(6)(iii)(D) of this section, DC agreed that, by making the election to waive depreciation deductions for Asset B, DC will not take into account the fact that depreciation deductions for Asset B were waived under paragraph (c)(6)(i) of this section. Accordingly, DC's net negative section 481(a) adjustment for this method change is \$15x, which is calculated by determining the difference between the depreciation deductions for Asset B for taxable years 1 and 2 under DC's present method of accounting (\$15x) and the depreciation deductions that would have been allowable for Asset B for taxable years 1 and 2 under DC's proposed method of accounting (\$30x).

(B) *Computation of basis adjustments*. Pursuant to paragraph (c)(6)(iii)(B)(3) of this section, DC's elections to waive the depreciation deductions for Asset B for taxable years 1 and 2 are disregarded for determining the amount allowable for depreciation for purposes of section

1016(a)(2). The amount allowable for depreciation of Asset B is determined based on the proper method of computing depreciation for Asset B. Accordingly, Asset B's adjusted basis at the end of taxable year 1 is \$90x (\$100x - \$10x) and at the end of taxable year 2 is \$70x (\$90x - \$20x).

■ **Par. 6.** Section 1.59A-7 is amended by:

■ 1. Adding paragraph (c)(5)(v).
 ■ 2. In paragraph (e)(2)(ii), removing the language “§ 1.59A-2(d)(2)” and adding the language “§ 1.59A-2(d)(3)” in its place.

■ 3. Adding paragraph (g)(2)(x).
 The additions read as follows:

§ 1.59A-7 Application of base erosion and anti-abuse tax to partnerships.

* * * * *

(c) * * *

(5) * * *

(v) *Allocations of income in lieu of deductions*. If a partnership adopts the curative method of making section 704(c) allocations under § 1.704-3(c), an allocation of income to the partner to whom any built-in gain or built-in loss would be allocable under section 704(c) (the 704(c) partner), in an amount necessary to offset the effect of the ceiling rule (as defined in § 1.704-3(b)(1)), in lieu of a deduction allocation to a partner other than the 704(c) partner (a non-704(c) partner), is treated as a deduction to the non-704(c) partner for purposes of section 59A in an amount equal to the income allocation. See paragraph (g)(2)(x) of this section (*Example 10*) for an example illustrating the application of this paragraph (c)(5)(v).

* * * * *

(g) * * *

(2) * * *

(x) *Example 10: Section 704(c) and curative allocations*—(A) *Facts*. The facts are the same as in paragraph (d)(2)(ii)(A) of this section (the facts in *Example 2*), except that DC's property is not depreciable, PRS uses the traditional method with curative allocations under § 1.704-3(c), and the curative allocations are to be made from operating income. Also assume that the partnership has \$20x of gross operating income in each year and a curative allocation of the operating income satisfies the “substantially the same effect” requirement of § 1.704-3(c)(3)(iii)(A).

(B) *Analysis*. The analysis and results are the same as in paragraph (d)(2)(i)(B) of this section (the analysis in *Example 1*), except that actual depreciation is \$8x (\$40x/5) per year and the ceiling rule shortfall under § 1.704-3(b)(1) of \$2x per year is corrected with a curative

allocation of income from DC to FC of \$2x per year. Solely for U.S. federal income tax purposes, each year FC is allocated \$12x of total operating income and DC is allocated \$8x of operating income. Both the actual depreciation deduction to DC and the curative allocation of income from DC are base erosion tax benefits to DC under paragraphs (c)(5)(v) and (d)(1) of this section.

■ **Par. 7.** Section 1.59A–9 is amended by:

■ **1.** For each paragraph listed in the table, removing the language in the “Remove” column wherever it appears and adding in its place the language in the “Add” column as set forth below:

Paragraph	Remove	Add
(b)(1)	plan or.	plan, or
(b)(2)	plan or.	plan, or
(b)(3)	plan or.	plan, or
(c)(3)(ii)	plan or.	plan, or

- **2.** Revising paragraph (b)(4).
- **3.** Adding paragraphs (b)(5) and (6).
- **4.** Revising paragraphs (c)(11)(ii) and (c)(12).

The revisions and addition read as follows:

§ 1.59A–9 Anti-abuse and recharacterization rules.

* * * * *

(b) * * *

(4) *Nonrecognition transactions.* If a transaction (or series of transactions), plan, or arrangement (the first transaction) increases the adjusted basis of property that the taxpayer acquires in a transaction (the second transaction) that qualifies for the specified nonrecognition transaction exception in § 1.59A–3(b)(3)(viii)(A) (or would qualify, but for this paragraph (b)(4)), and a principal purpose of the first transaction was to increase the taxpayer’s depreciation or amortization deductions without increasing the taxpayer’s base erosion tax benefits, then § 1.59A–3(b)(3)(viii)(A) does not apply to the property acquired in the second transaction to the extent of the increase in adjusted basis. For purposes of this paragraph (b)(4), if a transaction (or series of transactions), plan, or arrangement between related parties increases the adjusted basis of property within the six-month period before the taxpayer acquires the property, the transaction (or series of transactions), plan, or arrangement is deemed to have such a principal purpose.

(5) *Transactions involving derivatives on a partnership interest.* If a taxpayer acquires a derivative on a partnership interest (or partnership assets) as part of

a transaction (or series of transactions), plan, or arrangement that has as a principal purpose of avoiding a base erosion payment (or reducing the amount of a base erosion payment) and the partnership interest (or partnership assets) would have resulted in a base erosion payment had the taxpayer acquired that interest (or partnership asset) directly, then the taxpayer is treated as having a direct interest instead of a derivative interest for purposes of applying section 59A. This paragraph (b)(5), however, does not apply to a derivative, as defined in section 59A(h)(4)(A)(v), on a partnership asset to the extent the payment pursuant to the derivative qualifies for the exception for qualified derivative payments in § 1.59A–3(b)(3)(ii) and § 1.59A–6. A derivative interest in a partnership includes any contract (including any financial instrument) the value of which, or any payment or other transfer with respect to which, is (directly or indirectly) determined in whole or in part by reference to the partnership, including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations.

(6) *Allocations to eliminate or reduce a base erosion payment.* If a partnership receives (or accrues) an amount from a person not acting in a partner capacity (including a person who is not a partner) and allocates the income or loss with respect to that amount to its partners with a principal purpose of avoiding a base erosion payment (or reducing the amount of a base erosion payment), then the taxpayer transacting (directly or indirectly) with the partnership will determine its base erosion payment as if the allocations had not been made and the items of income or loss had been allocated proportionately. The preceding sentence applies only when the allocations, in combination with any related allocations, do not change the economic arrangement of the partners to the partnership.

(c) * * *

(11) * * *

(ii) *Analysis.* Paragraph (b)(4) of this section does not apply to DC’s acquisition of Property 1 because the purchase of Property 1 from U (first transaction) did not have a principal purpose of increasing DC’s adjusted basis of Property 1 without increasing DC’s base erosion tax benefits. The transaction is economically equivalent to an alternative transaction under which FP contributed \$100x to DC and then DC purchased Property 1 from U. Further, the second sentence of paragraph (b)(4) of this section

(providing that certain transactions are deemed to have a principal purpose of increasing the adjusted basis of property acquired in a second transaction) does not apply because FP purchased Property 1 from an unrelated party.

(12) *Example 11: Transactions between related parties with a principal purpose of increasing the adjusted basis of property—(i) Facts.* The facts are the same as paragraph (c)(11)(i) of this section (the facts in *Example 10*), except that U is related to FP and DC.

(ii) *Analysis.* Paragraph (b)(4) of this section applies to DC’s acquisition of Property 1 because the transaction that increased the adjusted basis of Property 1 (the purchase of Property 1 from U) was between related parties, and within six months DC acquired Property 1 from FP in a specified nonrecognition transaction. Accordingly, the purchase of property from U (first transaction) is deemed to have a principal purpose of increasing the adjusted basis of Property 1 that DC acquires in the second transaction—the contribution (a transaction that qualifies as a specified nonrecognition transaction in part and would wholly qualify but for the application of paragraph (b)(4) of this section). Accordingly, the exception in § 1.59A–3(b)(3)(viii)(A) for specified nonrecognition transactions does not apply to the contribution of Property 1 to DC to the extent of the increased adjusted basis from the first transaction (\$50x), and DC’s depreciation deductions with respect to Property 1 will be base erosion tax benefits to the extent of the \$50x increase in adjusted basis in Property 1.

■ **Par. 8.** Section 1.59A–10 is revised to read as follows:

§ 1.59A–10 Applicability date.

(a) *General applicability date.* Sections 1.59A–1 through 1.59A–9, other than the provisions described in the first sentence of paragraph (b) of this section, apply to taxable years ending on or after December 17, 2018. However, taxpayers may apply these regulations in their entirety for taxable years beginning after December 31, 2017, and ending before December 17, 2018. In lieu of applying the regulations referred to in the first sentence of this paragraph, taxpayers may apply the provisions matching §§ 1.59A–1 through 1.59A–9 from the Internal Revenue Bulletin (IRB) 2019–02 (https://www.irs.gov/irb/2019-02_IRB) in their entirety for all taxable years beginning after December 31, 2017 and ending on or before December 6, 2019.

(b) *Exception.* Sections 1.59A–2(c)(2)(ii) and (c)(4) through (6), 1.59A–3(b)(3)(iii)(C), 1.59A–3(c)(5) and (6), and

1.59A–9(b)(4) apply to taxable years beginning on or after October 9, 2020, and §§ 1.59A–7(c)(5)(v) and 1.59A–9(b)(5) and (6) apply to taxable years ending on or after December 2, 2019. Taxpayers may apply those regulations in their entirety for taxable years beginning after December 31, 2017, and before their applicability date, provided that, once applied, taxpayers must

continue to apply them in their entirety for all subsequent taxable years. Alternatively, taxpayers may apply only § 1.59A–3(c)(5) and (6) for taxable years beginning after December 31, 2017, and before their applicability date, provided that, once applied, taxpayers must continue to apply § 1.59A–3(c)(5) and (6) in their entirety for all subsequent taxable years.

§ 1.1502–59A [Amended]

■ **Par. 9.** Section 1.1502–59A is amended by removing the language in the “Remove” column from wherever it appears and adding in its place the language in the “Add” column for each paragraph listed in the table, as set forth below.

Paragraph	Remove	Add
(f)(6)	§ 1.163(j)–1(b)(2)	§ 1.163(j)–1(b)(3).
(f)(14)	§ 1.163(j)–1(b)(9)	§ 1.163(j)–1(b)(11).
(f)(21)	§ 1.163(j)–1(b)(31)	§ 1.163(j)–1(b)(36).

■ **Par. 10.** Section 1.6031(a)–1 is amended by:

- 1. Adding paragraph (b)(7).
- 2. Designating paragraph (f) as paragraph (f)(1).
- 3. Adding paragraph (f)(2).

The additions read as follows:

§ 1.6031(a)–1 Return of partnership income.

* * * * *

(b) * * *

(7) *Filing obligation for certain partners of certain foreign partnerships with respect to base erosion payments.* If a foreign partnership is not required to file a partnership return and the foreign partnership has made a payment or accrual that is treated as a base

erosion payment of a partner as provided in § 1.59A–7(c), a partner in the foreign partnership who is a person required to file a Form 8991 (or successor) must include the information necessary to report those base erosion payments and base erosion tax benefits on Form 8991 (or successor) in accordance with the related instructions. A partner with a Form 8991 (or successor) filing requirement who is a partner in a foreign partnership that is not required to file a partnership return must obtain the necessary information to report any base erosion payments on Form 8991 (or successor) from the foreign partnership or from any other reliable records of these payments.

This paragraph does not apply to any partner described in § 1.59A–7(d)(2).

* * * * *

(f) * * *

(2) *Applicability date.* Paragraph (b)(7) of this section applies to taxable years ending on or after *October 9, 2020.*

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: August 24, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–19959 Filed 10–8–20; 8:45 am]

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October 9, 2020

Part VI

The President

Proclamation 10095—German-American Day, 2020

Presidential Documents

Title 3—

Proclamation 10095 of October 5, 2020

The President

German-American Day, 2020

By the President of the United States of America**A Proclamation**

Since our founding, German-Americans have been central to our progress as a Nation. Industrious and faithful early German immigrants came to our shores to fulfill dreams of economic opportunity and to live out their faith free from government interference. These men and women established families and built livelihoods, exhibiting virtues that helped form our unique American ethos and passing down traditions that continue to shape our cultural identity. Today, on German-American Day, we commemorate the extraordinary contributions of German-Americans to our country, and we pay tribute to the more than 43 million Americans who, like myself, claim German heritage.

The story of German-Americans is embedded in the most sacred chapters of American lore. When members of the first Continental Congress met in Philadelphia to forge a future of freedom on this continent, they walked down streets brimming with German businesses. Their deliberations were diligently reported in German-language broadsides and rigorously debated in German-owned coffeehouses. On July 4, 1776, when the Founding Fathers declared our independence, a German-language newspaper was the first to break the news to the new Nation. The next day, the streets were flooded with German translations of Thomas Jefferson's revolutionary words proclaiming that "all men are created equal."

Ever since, Americans of German descent have left their mark on our history. German influence played a large role in establishing our unyielding commitment to universal public education. It was a German-American, Margarethe Meyer Schurz, who opened the first kindergarten in America. German-Americans helped champion physical education and built the first gymnasiums for school buildings, positively affecting the physical health of our schoolchildren. German-Americans also introduced vocational training in public schools, providing new avenues for economic empowerment for young people and fueling American prosperity.

Over the years, German customs have also become infused into American culture. Our cherished Christmas and Easter traditions are influenced by practices of early German arrivals. At Christmastime, we draw on German culture when we decorate Christmas trees and exchange gifts. During Easter, we have German immigrants to thank for our Easter egg hunts. These traditionally German customs have become staples of American culture and continue to unite Americans of all backgrounds.

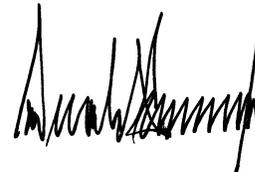
This month also marks the 30th anniversary of German reunification following the fall of the Berlin Wall in November of 1989. This historic moment marked a triumph for democracy and paved the way for a more free and open Europe. As we celebrate the many contributions of German-Americans to our country, we also celebrate our strong transatlantic ties with Germany and recommit to working together to forge a brighter future for both our nations and the world.

Today, we celebrate the societal achievements and cultural contributions of all German-Americans and reflect on the hardworking and efficient spirit that they have imbued in our national character. From engineers and doctors

to bakers and inventors, they have strengthened our economy and enriched our communities. Thanks in part to their dedication and hard work, our country remains a shining beacon of freedom and prosperity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 6, 2020, as German-American Day. I call upon all Americans to celebrate the achievements and contributions of German Americans to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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